CHILD AND ADOLESCENT MENTAL HEALTH DIVISION
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HIPAA Policies & Procedures

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.215** Effective Date: March 7, 2003 History:
SUBJECT: Disclosures to Business Associates REFERENCE: 45 C.F.R. §164.502, 164.504; 34 C.F.R. Part 99 (FERPA)	Page: 1 of 7 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish the requirements regarding the use and disclosure of protected health information governing contracts between Child and Adolescent Mental Health Division (CAMHD) and its business associates.

DEFINITION

Business Associates: A person or entity who:

a. On behalf of CAMHD, other than in the capacity of a member of the workforce of CAMHD, performs, or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information, including, but not limited to, the processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing; or

b. Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for such covered entity, where the provision of the service involves the disclosure of individually identifiable health information (IIHI) from CAMHD, or from another business associate of CAMHD, to the person.

Covered entity: A health care provider, health plan or health care clearinghouse, which receives and transmits protected health information.

Data aggregation: the combining by a business associate of protected health information (PHI) created or received as a business associate of one entity with PHI received as a business associate of another entity, to permit data analyses relating to the healthcare operations of the respective entities.

Disclose: the release, transfer, provision of access to, or divulging in any other manner the protected health information held by the covered entity.

Use: the sharing, employment, application, utilization, examination, or analysis of the protected health information held by the covered entity.

POLICY

A. Business Association Contracts

CAMHD will enter into a written contract or agreement with any business associate (as defined above) where the function, activity or service provided by the business associate involves the use or disclosure of PHI held by CAMHD.

The following functions and activities are ***excepted*** from HIPAA requirements for a business associate contract or agreement:

1. Disclosures to a financial institution for processing of consumer- conducted financial transactions in payment for heath care;
2. Disclosures to a health care provider related to treatment;
3. Disclosures by a group health plan to a plan sponsor;
4. Entities that are merely conduits for information;
5. Disclosures to providers participating in an organized healthcare arrangement; and
6. Disclosures by a health plan that is a government program providing public benefits, if an individual's eligibility or enrollment in the heath plan is determined by another entity authorized by law.

These functions and activities, although excepted from HIPAA requirements for business associates, may not be excepted from any requirement(s) pursuant to the Family Educational Records Privacy Act (FERPA), and consent to release personally identifiable information may be required under 34 C.F.R. §99.30

B. Requirements of the Business Associate Contract or Agreement

The formal specifics of the business associate contract or agreement will be developed and approved by the State of Hawaii Attorney General's Office. Such contract will incorporate the legal requirements relating to business associate contracts as promulgated by DHHS in 45 C.F.R. §164.502(e) and 164.504 (e). Any deviations from the standard business associate contract will need to be approved by both the Attorney General's Office and the DOH Privacy Officer.

C. Breach and/or termination of the business associate contract

1. Should CAMHD become aware of a pattern of activity or practice of the business associate that constitutes a material breach or violation of the business associate's

obligation under the contract, CAMHD will ensure that the business associate take all reasonable steps to cure the breach or end the violation.

2. If such steps are unsuccessful, CAMHD will:

   a. Terminate the contract, if feasible, or

   b. If not feasible, report the problem to the Secretary of DHHS.

D. Potential CAMHD Business Associates

General

Computer software vendors
Computer hardware vendors
Document destruction vendors
Data Aggregate vendors
Accreditation Contracts (e.g., JCAHO, CARF, etc.)
Cleaning Companies
Emergency Medical Transport Agencies
Maintenance Contracts
Information Technology Contracts
Legal Service Contracts
Practice Management Contracts
Accounting services contracts
Revenue management services contracts
Actuarial Services
Risk management consulting vendors
Insurance companies (liability/employee health/etc.)
Pharmaceutical Companies
Laboratory services
Other hospitals
Consultant contracts

Medical Records

Microfilming/Scanning Vendors
Transcription Vendors
Coding Contract workers and/or vendors
Audit vendors
Release of information vendors

Billing

Clearinghouse Vendors
Claims Administration

Collection Agencies
Billing Services Contracts
Application Service Providers

PROCEDURE

Where CAMHD is required to enter into a contractual relationship with a Business Associate/vendor (other than a mental health service provider) as listed above, CAMHD will utilize the following contractual rules:

A. Business Associate Contracts

1. The contract must establish the permitted and required uses and disclosures of protected health information by the business associate including:
   a. the purposes of the disclosure; and
   b. the reasons and types of persons to whom the business associate may make further disclosures.
2. The contract may not authorize the business associate to use or further disclose PHI in a manner that the entity itself may not use or disclose the PHI under federal and state law except that:
   a. The contract may permit the business associate to use the PHI received by the business associate in its capacity as a business associate, if necessary
      (1) For the proper management and administration of the business associate, or
      (2) To carry out the legal responsibilities of the business associate.
   b. The contact may permit the business associate to disclose the PHI received by the business associate in its capacity as a business associate:
      (1) If the disclosure is required by law, or
      (2) If the business associate obtains reasonable assurances from the person to whom the information is disclosed that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed, and the person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
   c. The contract may permit a business associate to provide data aggregation services relating to the health care operations of CAMHD.

3. The contract may permit a business associate to use PHI to create information that is not individually identifiable health information.

4. The contract shall provide that the business associate will:

   a. Not use or disclose PHI other than as permitted or required by the contract or required by law;

   b. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided in the contract;

   c. Report to CAMHD any use or disclosure of PHI not permitted by the contract of which it becomes aware;

   d. Ensure that any agents or subcontractors with access to the PHI will agree to the same restrictions and conditions as the business associate with respect to the PHI;

   e. Make available PHI as necessary for compliance with the individual's rights to access;

   f. Make available PHI as necessary for compliance with the individual's right to request an amendment and incorporate any amendments to PHI held;

   g. Make available the information required to provide an accounting of disclosures of an individual's protected health information;

   h. Make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of DHHS for the purposes of determining compliance with the law; and

   i. Return or destroy PHI at contract termination and retain no copies of such information, if feasible. If not possible,

      (1) The protections of the agreement must apply until such time that the PHI is returned or destroyed; and

      (2) Limit further uses or disclosures of the PHI to those purposes that made the return or destruction of the information infeasible.

B. Business Associate Contracts or Agreements Between Governmental Entities

If both parties to the contract or agreement are governmental agencies:

1. The covered entity may comply with the business associate requirements by entering into a memorandum of understanding with the business associate that contains terms covering the elements of the business associate contract, or

2. The covered entity may comply with the business associate requirements if other law (including regulations adopted by the entity or its business associate) contains requirements applicable to the business associate, which accomplish the objectives of the business associate contract.

E. Functions or Activities Performed by a Business Associate as Required by Law

1. A covered entity may disclose protected health information to a business associate who is required by law to perform a function or activity on behalf of the entity to the extent necessary to comply with the legal mandate. A business associate contract is not required provided that the entity:
   a. Attempts in good faith to obtain satisfactory assurances through a memorandum of agreement as outlined above, and
   b. If such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.
2. The termination authorization required in the business associate contract may be omitted from the above agreement if such authorization is inconsistent with the statutory obligations of the entity or its business associate.

F. Mitigation of a Breach

Business Associates are required to adhere to mitigation guidelines in the event of an unauthorized disclosure of PHI.

1. Business Associate shall make diligent efforts to ensure that all unauthorized disclosure of PHI is destroyed by the recipient. The recipient must then be notified that re-disclosure of the PHI is not permitted.
2. In instances involving oral uses or disclosures of PHI that are unauthorized, the office, program or facility shall inform the individual(s) receiving the PHI that the use/disclosure was not authorized and that that s/he may not re-disclose the PHI to others.
3. In instances involving written or electronic use or disclosures of PHI that are unauthorized, the office, program or facility shall inform the individual(s) receiving the PHI that the use/disclosure was not authorized and that the PHI must be destroyed and/or deleted. If the individual(s) may have further disclosed to others, s/he will be requested to notify those individuals that the PHI must be destroyed.
4. FAX Transmissions. In the event of PHI being sent in error via facsimile, or PHI faxed to a wrong number, a second fax shall be sent to the wrong number with the statement:

YOU HAVE RECEIVED A TRANSMISSION FROM US IN ERROR. PLEASE CALL THE NUMBER OF THE PERSON THAT SENT THE TRANSMISSION, IDENTIFIED ON THE ORIGINAL FAX COVER SHEET, TO CONFIRM THIS. PLEASE MAIL THE ORIGINAL FAX BACK TO US AT: _____ [insert the address of the business associate involved].

(see P&P 80.402 "Confidentiality, FAX Transmissions")

ATTACHMENT: None

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.307** Effective Date: March 5, 2003 History: 8/28/95
SUBJECT: New Employee Orientation REFERENCE: CARF Section 1.III.B.1; 45 C.F.R. §164.530(b)-Preamble p. 8254	Page: 1 of 4 APPROVED: ***Signature on File*** Chief

PURPOSE

To inform new staff and staff moving into new positions about their rights, benefits, obligations and responsibilities, as well as CAMHD's organizational structure, its program activities and working conditions. Such orientation shall also be provided to any emergency hire, temporary and contract employees, volunteers, trainees, interns and students.

To establish the workforce training requirements with respect to the use and disclosure of protected health information (PHI) and to set forth the documentation requirements of such training.

DEFINITION

"*Workforce*" - Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

POLICY

All new staff employees should have the opportunity to know the basic information, resources and people necessary to be effective and efficient in performing their duties. Program managers or supervisors shall use an organized orientation process when new employees are hired, including employees who move within the division into a different position.

The CAMHD Central Administrative Office (CAO) and each CAMHD Family Guidance Center (FGC) shall be responsible for orienting new employees and documenting such orientation by way of the attached New Employee Orientation Checklist.

Mandatory training upon orientation and then, at least bi-annually, thereafter includes Compliance training and uses/disclosure of PHI under HIPAA and FERPA federal laws. Workforce training will consist of:

A. **Required training** - CAMHD must train all members of its workforce on its policies and procedures with respect to its compliance program and the use and disclosure of PHI as set forth below, as necessary and appropriate for the members of the workforce to carry out their function within CAMHD.

B. **Training** - CAMHD shall provide training as follows:

1. Each member of the workforce will be trained in general privacy principals/practices by April 14, 2003.
2. A functional training session will be provided for members of the workforce whose job entails the direct use of PHI, e.g., process disclosures, security and handling of PHI, etc.
3. A job specific training session will be provided for all employees whose job entails determination of disclosures of PHI e.g., verification of identity and authority of individuals who request PHI, disclosing PHI, accounting for disclosures, etc.
4. To each member of the workforce whose functions are affected by a material change in the policies or procedures within 30 days after the material change becomes effective.
5. A refresher training will be provided to all members of the workforce no less than every two years.

C. **Documentation of training** - CAMHD must:

1. Document that the training required under this policy has been provided. Documentation may include a roster of attendance by workforce members and curriculum for the training program.
2. Retain such documentation for six years from the date of its creation.

D. Training responsibility

The Clinical Services Office of CAMHD in collaboration with the Privacy Officer shall be responsible to oversee development, implementation, and documentation of the privacy training program in compliance with this policy. The division's Compliance Officer shall be responsible for providing compliance program training.

PROCEDURE

1. Supervisors or their Designees shall be responsible for orienting new employees and documenting such orientation using the New Employee Orientation Checklist. Each item on the list shall be checked after the item has been explained to the employee. Upon completion of the checklist, it shall be signed by the supervisor and employee.
2. The CSO will provide initial and subsequent training of all CAMHD workforce on the uses and disclosures of PHI, along with the appropriate accounting of all releases of such information. Such training may include, but is not limited to:

a. Workshop presentations at the Central Administration Office and at each Family Guidance Center. Training may include the use of video(s), computer CD-ROM, Internet/Intranet and/or consultants.

b. An examination on recognizing what constitutes PHI and the appropriate release thereof. Along with CAMHD's internal practice of releasing PHI among its workforce (e.g., minimum necessary).

c. Signed certification that employee received training, which will become part of the employee's record and maintained there for a minimum of six years, and six years for each subsequent training. Certification will include:

(1) Curriculum;

(2) Date of training; and

(3) Signature of trainer.

3. The Compliance Officer shall be responsible to oversee development, implementation and documentation of the Compliance Program training. Such training may include handbooks, distribution of the Compliance Program documents, and Standards of Conduct, testing materials, video tapes, CD-ROM, or lectures, etc. all employees will be expected to sign the "Standards of Conduct" and the form will be filed in the employee's personnel file at CAMHD's Central Administrative Office. Attendance at Compliance training is a mandatory requirement.

4. The employee orientation format shall have, but will not be limited to, the following elements as listed on the New Employee Orientation Checklist:

a. Forms – Consumer Record, initial intake/update Tax withholding, wages, health, union, etc.

b. work site issues

c. Office hours, smoking policy, parking policy, office supplies, restrooms, etc.

d. Administrative issues

e. Program goals and objectives, specific jobs and job responsibilities, position descriptions, confidentiality, etc.

f. Other benefits

g. Vacation, sick leave, worker's compensation, holidays, etc.

h. Handouts

i. Job benefits, equal employment opportunity, equal health care, etc.

5. The orientation process shall be completed within 30 working days after the employee is hired.

6. After completion of an employee's orientation, the New Employee Orientation Check list shall be filed in the employee's personnel file at the FGC's Administrative Office or at the CAMHD Personnel Office, if the employee is a Central Administrative Office staff member.

ATTACHMENT: **New Employee Orientation Checklist**

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.401** Effective Date: March 17, 2003 History: 4/8/96
SUBJECT: Informed Consent to Evaluation and Treatment REFERENCE: HRS §334-E-1, Informed Consent; HRS §671-3, Informed Consent Board of Medical Examiners' Standards; HAR 16-85, Subchapter 4, Informed Consent	Page: 1 of 3 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish procedures under which informed consent to evaluation/treatment is obtained from the consumer, parent or legal guardian of the consumer.

DEFINITION

"Evaluation" - the gathering and assessment of all pertinent information to identify problems and strengths, to define intervention goals, and to formulate a diagnosis or diagnostic impression.

"Informed consent to treatment" - a signed agreement by the consumer, if age 18 and above, or the parent to treatment following an explanation and subsequent understanding of the condition being treated, the proposed treatment, the anticipated results, the benefits and risks of such treatment and alternatives to the proposed treatment, including non-treatment (HRS §671-3).

"Treatment" - the broad range of emergency, out-patient, intermediate, domiciliary, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, career counseling, and other special services which may be extended to mentally ill children and adolescents.

"*Parent*" - a parent of the consumer and includes a natural parent or a legal guardian.

POLICY

1. Informed consent shall be obtained from the consumer, if aged 18 and above, or from the minor consumer's parent before any voluntary evaluation and, if applicable, subsequent treatment can commence.

2. Informed consent is not required when involuntary emergency treatment is rendered, and completing the informed consent form to treatment is not reasonably feasible under circumstances, which may adversely affect the consumer. However, as soon as the

emergency is over and before non-emergency treatment is instituted, informed consent shall be obtained.

3. Informed consent to treatment may be sought but is not required when a consumer:
   a. Is committed to the custody of the Director of Health for treatment in an institution (unfit to proceed or acquittal on the grounds of physical or mental disease, disorder, or defect excluding responsibility);
   b. Is court-ordered to involuntary hospitalization and is specifically ordered to receive involuntary inpatient treatment; or
   c. Is ordered by a court to receive involuntary outpatient treatment.
4. A consumer or parent who is non-English speaking or has limited English-speaking ability shall be provided with the services of a qualified interpreter for the purpose of obtaining consent to treatment.
5. A consumer or parent whose disability affects communication shall be provided with the appropriate communications aid (*e.g.* sign language interpreter for the purpose of obtaining consent to treatment.

PROCEDURE

1. Whenever informed consent to treatment is being obtained, a professional, clinical staff member shall:
   a. Verbally inform the consumer, if age 18 or above, or the parent about:
      1) Records which shall be maintained and shared about the consumer;
      2) Condition(s) to be treated, a description of the proposed treatment, and the anticipated results;
      3) Purpose(s) of the proposed treatment or recommended procedures;
      4) Anticipated benefits, risks, and results of the proposed treatment;
      5) Alternative forms of treatment available (including no treatment) and the benefit and risks of each;
      6) The time period covered by the consent;
      7) The right to ask questions about the proposed treatment and have them answered;
      8) The right to secure a second opinion, and
      9) The right to withdraw consent at any time.
   b. Information in section 1.a. (above) may be withheld or released only to consumer, if age 18 or above, or the parent or personal representative if, in the judgment of

the health care provider, the information would be detrimental to the consumer's mental or physical health or not in the best interest of the consumer.

c. Complete the Consent to Treatment form with the consumer, if age 18 or above, or the parent, using communication aids where applicable.

d. Obtain the date and signature(s) of the consumer, if age 18 or above, or the parent.

e. Sign and date the consent form.

f. The original consent form shall be placed in the consumer's clinical record; a copy shall be given to the consumer, if age 18 or above, or the parent providing consent.

g. Each FGC shall use the form attached to this policy.

2. Informed consent to treatment shall be valid for up to twelve (12) months from the date of consent, except when consent is withdrawn by the consumer, if age 18 or above, or the parent, either verbally or in writing. When consent to treatment is withdrawn, a written documentation of the withdrawal of consent shall be placed in the clinical record.

3. Whenever a consent to treatment is withdrawn, the consent form shall be signed and dated by the consumer, if age 18 or above, or the parent. If this signature is not forthcoming, the clinician shall indicate, "*signature not available"* on the signature line.

ATTACHMENT:

A. Informed Consent to Evaluation with "Instructions: Informed Consent to Evaluation/Treatment"

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.402** Effective Date: April 3, 2003 History: 12/16/02
SUBJECT: Confidentiality, FAX Transmissions REFERENCE: HRS 334-5, Confidentiality of Records; CARF Organizational Standards for Information Management; 45 C.F.R. 164.530; 34 C.F.R. Part 99 (FERPA)	Page: 1 of 4 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish reasonable safeguards to protect the privacy of protected health information transmitted by FAX.

DEFINITION

Health Information - any information, whether oral or recorded in any form or medium, that:

1. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
2. Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to the individual.

"Individually Identifiable Health Information" – information that is a subset of health information, including demographic information collected from an individual, and:

1. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
    a) That identifies the individual; or
    b) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Protected Health Information –individually identifiable health information that is transmitted by electronic media or maintained in electronic form/medium that is:

1. Transmitted by electronic media;
2. Maintained in any medium described in the definition of electronic media at 45 CFR §162.103 of this subchapter; or.
3. Transmitted or maintained in any other form or medium.

Protected health information excludes individually identifiable health information in:

a) Education records covered by the Family Educational Rights and Privacy Act (FERPA) as amended by 20 U.S.C. 1232g;

b) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and

c) Employment records held by a covered entity in its role as employer.

Secured Location - area where the fax machine is located that is accessible only by the recipient or person(s) within the program for which the transmission is intended.

POLICY

The risks and benefits of faxing information about consumers should be weighed carefully before FAX technology is used. All requirements for release and disclosure of protected health information, as identified in the CAMHD P&Ps and as required by federal and state laws, shall be met prior to faxing consumer information. Appropriate staff who are authorized shall fax protected health information.

PROCEDURE

A. All FAX transmissions containing protected health information about consumers shall have a cover sheet which includes at least:

1. The name of the person or designee to which the information is being sent (recipient);
2. The number to which the information is to be sent;
3. The person responsible for the transmission (sender);
4. The phone number from which the transmission was sent;
5. A description of the material(s) sent, excluding protected health information; and

6. The following statement:

   THIS COMMUNICATION IS INTENDED ONLY FOR THE USE OF THE PERSON OR PROGRAM NAMED ABOVE, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. WE AUTHORIZE DISCLOSURE OF THIS COMMUNICATION TO SUCH PERSON OR PROGRAM ONLY. IF YOU HAVE RECEIVED THIS INFORMATION IN ERROR, PLEASE NOTIFY US IMMEDITELY (BY COLLECT CALL, AND RETURN THIS ORIGINAL COMMUNICATION TO US AT OUR ABOVE ADDRESS VIA U.S. POSTAL SERVICE. THANK YOU.

B. When faxing to a secured location:

1. The sender must verify with a credible source the fax number of the intended destination.
2. The number entered into the fax machine shall be checked for accuracy against the number on the cover sheet.
3. The sender shall confirm the transmission and verify that the recipient's number matches the number of the intended destination indicated on the confirmation sheet. If using a fax machine that does not produce confirmation of transmission the sender must follow the procedure for sending a fax to a location that is not secured.

C. When faxing to a location that is not secured and prior to starting the transmission:

1. The sender shall call ahead to the intended fax destination to inform the recipient that the fax is being sent and request that the recipient receive the fax or deliver to the person identified on the fax cover sheet.
2. The sender shall request that the recipient confirm upon receipt that the fax was received.
3. If a recipient is not available at the intended destination when the call is placed, the sender shall wait to fax the report until a recipient is available to receive the transmission.

D. The transmission sheet or the cover sheet shall be placed in a central administrative file as confirmation of the transmission.

E. In the event that protected health information is faxed to the wrong number, and no communication to this effect is received from the mistaken location as requested by the statement on the cover sheet, a second fax shall be sent to the wrong number with the statement:

YOU HAVE RECEIVED A TRANSMISSION FROM US IN ERROR. PLEASE CALL THE NUMBER OF THE PERSON THAT SENT THE TRANSMISSION, IDENTIFIED ON THE ORIGINAL FAX COVER SHEET, TO CONFIRM THIS. PLEASE MAIL THE ORIGINAL FAX BACK TO US AT _____ [Insert the address of Central Office or the involved CAMHD Branch].

ATTACHMENT(S): None

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.404** Effective Date: February 21, 2003 History: 8/15/95
SUBJECT: Release of Clinical Information Pursuant to a Subpoena and Subpoena Duces Tecum REFERENCE: HRS §334-5; HRS §622-52; HRS §704-404 HRS §325-101; 45 C.F.R. §164.512(e); 34 C.F.R. Part 99 (FERPA); Federal Confidentiality laws and regulations: DHHS, 42 C.F.R. Part 2, Section 2.61-2.67; HAR 11-175-30, Rule 504, Hawaii Rules of Evidence (re: Patient and Physician privilege); HRS Chapter 560, Uniform Probate Code.	Page: 1 of 5 APPROVED: ***Signature on File*** Chief

PURPOSE

To ensure that responses to subpoenas and subpoenas duces tecum are made with appropriate safeguards to consumers' rights to confidentiality. To ensure that CAMHD personnel appropriately receive, review and respond to a court order for records containing protected health information, pursuant to HIPAA guidelines, or personally identifiable information in educational records, pursuant to FERPA guidelines, for use in judicial or administrative proceedings.

DEFINITION

A *"subpoena"* is a legal document from a governmental agency or a court, ordering attendance or performance by the person being subpoenaed, at a specified time and place.

A *"subpoena duces tecum"* is a legal document to the custodian of a record, ordering appearance with the designated records, at a specified time and place. The order may be signed by a clerk, judge, or an administrative hearing officer.

An *"administrative Tribunal"* is a board, commission or tribunal (other than a court) having authority under Hawaii state or federal law to compel the production of protected health information.

A *"Qualified Protective Order"* is an order of the court or an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

A. Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested, and

B. Requires the return to CAMHD or destruction of the protected health information or personally identifiable information (including all copies made) at the end of the litigation or proceeding.

"Specially Protected Health Information" means:

A. Documentation relating to the presence of AIDS. HIV or any AIDS related diagnosis (HRS 325-101: Haw. Admin. R 17-1401-4(2));

B. Substance abuse records (drug and alcohol) which reflect treatment/management of substance abuse by a federally approved substance abuse program (42 CFR); or use of other substance abuse services (Haw. Admin. R 11-175-31 (a)(5));

C. Documentation relating to mental health diagnosis and treatment (HRS 334-5);

D. Records relating to persons with developmental disabilities (HRS 333E-6(4));

E. Information in the records of peer review committees and proceedings; and

F. Psychiatric notes.

POLICY

1. All subpoenas and subpoenas duces tecum shall be responded to pursuant to the five-day requirement in HRS 622-52(a) under the direction of the CAMHD Chief.

2. Only those portions of consumers' records generated by CAMHD shall be copied or inspected (HAR 11-175-30(b)).

3. Substance abuse, HIV, ARC and AIDS information may be released only under conditions specified in Federal and State regulations.

4. Pursuant to 34 C.F.R. Part 99 (FERPA), disclosure of personally identifiable information (PII) from education records is to comply with a judicial order or lawfully issued subpoena. CAMHD may disclose information only if CAMHD makes a reasonable effort to notify the parent or eligible student (a student who has reached 18 years of age or is attending an institution of postsecondary education) of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with:

   A. A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

   B. Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

   C. If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order

or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

D. If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

5. Pursuant to 45 C.F.R. §164.512(e), CAMHD may disclose protected health information (PHI) in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that CAMHD discloses only the protected health information expressly authorized by such order.

PROCEDURE

A. Subpoenas

1. Upon service of a subpoena, the recipient shall indicate on the back of the document, the name of the Sheriff's deputy, the date and time, and the name of the person accepting it.

2. The person to whom the subpoena is directed shall review the consumer's record and consult with the CAMHD Chief or designee to determine the most reasonable manner by which to respond, weighing confidentiality parameters and judicial mandate. Response options may include, but are not limited to:

a) Consulting with the ordering court to request modification of the subpoena order, as appropriate, while still in compliance with the subpoena intent;

b) Negotiating with the person who requested issuance of the subpoena for a written report in lieu of appearance; or

c) Attendance or performance, as orders.

3. The CAMHD Chief or designate shall notify the assigned Deputy Attorney General of the name of the staff and Team involved, the consumer's name and legal case number and the reason for the subpoena, and shall discuss the rationale for the recommended course of action selected.

4. All activities in response to the subpoena shall be documented in the consumer's chart.

B. Subpoenas Duces Tecum

1. Record release of mental health information is authorized when (pursuant to HRS §334-5):

a) The consumer or his/her legal guardian has waived confidentiality by signing a release of information form;

b) Disclosure may be deemed necessary by the Director of Health;

c) A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to the public's interest, or

d) Disclosure may be deemed necessary under the Federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Laws 99-319, to protect and advocate the rights of persons with mental illness who reside in facilities providing treatment (HR §334-5).

2. Substance abuse, alcohol, and HIV information may not be released pursuant to 1.b. For a court-ordered disclosure, the alleged consumer (or his/her legal representative) and the program must be notified that a hearing will be held to decide whether an authorizing court order to release information will be issued, and both the consumer and the program are given an opportunity to appear in person or file a responsive statement (42 CFR Section 2.64(b)).

3. If one of the conditions listed under Procedure B.1 does not exist, the CAMHD Team Head or designate shall contact the subpoena requestor to explain, in a non-adversarial manner, that the conditions under the laws of confidentiality have not been met, and for that reason, the recipient should be excused from responding. A letter to this effect may be sent to the requestor via certified mail, return receipt requested. Copies of such a letter shall be sent to the Deputy Attorney General and filed in the consumer's chart.

4. If the recipient of a subpoena duces tecum is excused from responding, a letter shall be sent to the person who requested issuance of the subpoena duces tecum confirming that the recipient is excused from compliance. A copy of this letter shall be placed in the consumer's chart.

5. If the recipient is not excused from responding, the assigned Deputy Attorney General shall be promptly consulted.

6. When original records are subpoenaed, they shall be personally transported to the requestor by a staff person who shall maintain physical possession of the record throughout the review.

7. All non-CAMHD generated records shall be removed by authorized personnel prior to permitting inspection or copying of the record.

FERPA NOTICE REQUIREMENT

Aside from the exceptions found in (4)(A)-(D), and pursuant to 34 CFR §99.31(9)(ii), upon service of a subpoena or subpoena duces tecum, CAMHD must make a ***reasonable effort*** to give notice to the parent or eligible student that a situation has occurred where personally identifiable information from educational records could be disclosed. Reasonable effort may include, but is not limited to:

a. A phone call to the last phone number of record; or

b. Written correspondence to the last address of record for the parent or eligible student requesting an immediate response.

ATTACHMENT:

A. Letter Sample

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.405** Effective Date: February 5, 2003 History: 8/06/95
SUBJECT: Mandatory Reporting of Child Abuse or Neglect REFERENCE: 45 C.F.R. §164.512; 34 C.F.R. Part 99; HRS Chapter 350, Child Protective Services - A Guide for Mandated Reporting, Intra-Departmental Directive No. 88-3	Page: 1 of 3 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish guidelines for reporting suspected cases of child abuse or neglect.

DEFINITIONS

"**Child abuse or neglect**" is defined as acts or omissions of any person who, or by legal entity which is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in harm to the physical or psychological health or welfare of a person under the age of eighteen or where there is any reasonably foreseeable, substantial risk of such harm. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to:

A. When the child exhibits evidence of child abuse and/or neglect including, but not limited to substantial or multiple skin bruising or any other internal bleeding, any injury to skin causing substantial bleeding, malnutrition, failure to thrive, burn or burns, poisoning, fracture of any bone, subdural hematoma, soft tissue swelling, extreme pain, extreme mental/emotional distress, gross degradation, death, and injury is not justifiably explained, or when the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

B. When the child has been the victim of sexual contact or conduct, including, but not limited to rape, sodomy, molestation, sexual fondling, incest, or prostitution, obscene or pornographic photographing or filming or depiction, or other similar forms of sexual exploitation; or

C. When there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child's ability to function; or

D. When the child is not provided in a timely manner with adequate food, clothing, shelter, or psychological care, physical care, medical care, or supervision; or

E. When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1230, HRS; provided that this paragraph shall not apply when drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240, HRS.

POLICY

CAMHD may disclose an individual's protected health information to the appropriate government authority authorized by law to receive reports of child abuse and neglect pursuant to 45 C.F.R. §164.512(b)(1)(ii). CAMHD may also disclose personally identifiable information from an educational record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student. 34 C.F.R. §99.36(a)

All CAMHD employees, or employees of a contracted agencies, who, in the performance of their professional or official duties, know or have reason to believe that child abuse or neglect has occurred shall promptly report the matter to the Department of Human Services, Public Welfare Division, Child Protective Services.

All students, interns and volunteers, who in the performance of their duties, know or have reason to believe that child abuse or neglect has occurred shall promptly advise their supervisor, and together they shall report the matter to the Department of Human Services, Child Protective Services.

PROCEDURE

1. When any employee or employee of contracted agency, has knowledge of or suspects child abuse or neglect, the employee shall immediately make an oral report to Child Protective Services of the Department of Human Services, requesting an oral response within five (5) working days. The usual vehicle will be the Child Abuse and Neglect (CAN) twenty-four (24) hour hotline on Oahu:

   Name and address of child victim and name of parents or other caretaker;

   Child's birth date or age;

   Names and ages of other persons who live with the child and their relationship to the child, if known;

   Nature and extent of the abuse or neglect, including any evidence or indication of previous abuse or neglect;

   Date, time and location of incident;

   Child's current location and condition;

   Identity of alleged perpetrator;

Whereabouts of alleged perpetrator and any history if available;

Any other information that may be helpful in determining the cause of the abuse or neglect; and

Whether or not there might be a family member who might be able to protect the child.

2. The employee shall notify his/her immediate supervisor that a report has been made and the supervisor shall notify CAMHD Performance Manager.
3. The employee shall complete a Child Abuse and Neglect (CAN) Mandatory Reporting Form and submit it to Child Protective Services (CPS) within three (3) working days of the oral report. A copy of the report shall be kept in an administrative file whether or not the consumer is the alleged perpetrator.
4. Within three (3) working days of the written report, if the CPS worker has not responded, attempts to make telephone contact shall be documented in the consumer's chart. The results of the contact shall be entered at the bottom of the reporting form.

ATTACHMENT(S): Child Abuse and Neglect (CAN) Mandatory Reporting Form

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.407** Effective Date: 12/19/02 History: 08/15/95
SUB JECT: Release of and Access to Confidential Information About Consumers REFERENCE: HRS Chapter 350; HRS Chapter 346, Part X; HRS 334F-5; Administrative Rule 11-175-31; Title 42 C.F.R. 431, Subpart F, Title 45 C.F.R. 160, 164	Page: 1 of 10 APPROVED: ***Signature on File*** Title: Chief, CAMHD

PURPOSE

To establish guidelines for the use, release, and safeguard of information about clients served through the Family Guidance Center (FGC) and by contract through provider agencies.

DEFINITION

1. Authorizations – Point-in-time authorizations required for uses and disclosures of protected health information (PHI) not otherwise permitted by this P&P or any other CAMHD requirements for the use or disclosure of protected health information.

2. Business Associate - A person who:
   a. On behalf of CAMHD or of the DHS Med-QUEST Division (MQD), other than in the capacity of a member of the workforce of CAMHD or MQD, performs, or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information, including, but not limited to, the processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and repricing.
   b. Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for such covered entity, or to or for MQD, where the provision of the service involves the disclosure of individually identified health information (IIHI) from CAMHD or MQD, or from another business associate of CAMHD or MQD, to the person.

3. Covered Entity – Means:
   a. A health plan.
   b. A healthcare clearinghouse.
   c. A healthcare provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

4. Individually identifiable health information - information that is a subset of protected health information, including demographic information collected from an individual, and:

a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
b. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
    i. That identifies the individual; or
    ii. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

5. Informed consent - The consumer has been informed of and understands the conditions surrounding the consent to release information.
    a. These conditions include:
        1. A description of the specific information requested and the purpose of the request;
        2. A reasonable discussion of the benefits and risks of providing consent;
        3. The opportunity for asking questions and receiving answers;
        4. The right to refuse consent;
        5. The right to release portions of the record;
        6. The right to withdraw consent at any time before the information is released; and
        7. Specific information to be released verbally or in writing and on a one-time basis (pertains only to events that have already occurred, and not for any future events).

6. Protected Health Information - individually identifiable health information that is:
    a. Transmitted by electronic media or maintained in electronic form/medium;
    b. Protected health information excludes individually identifiable health information in:
        i. Education record covered by the Family Educational Rights and Privacy Act (FERPA) as amended by 20 U.S.C. 1232g;
        ii. Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and
        iii. Employment records held by a covered entity in its role as employer.

7. Trading Partner – An organization or individual with which CAMHD conducts standard electronic transactions.

POLICY

1. Confidential information about a consumer can be disclosed only with the signed informed consent of the client and/or client's legal representative or guardian to release that information, unless listed below in exceptions.
2. CAMHD, its Business Associates, and Trading Partners, may not use or disclose protected health information without a valid authorization (any such use or disclosure must be consistent with the terms of that authorization), except as provided for in 7(a)-(c), or without offering the individual the opportunity to agree or object, as defined in the Procedures identified in this P&P.

3. All requirements for release of information shall be met prior to faxing consumer information. Faxing shall be done by an appropriately trained individual with careful attention to details and pursuant to P&P 80.402, "Confidentiality, FAX Transmissions."
4. Information and communication identifying any individual with a history of HIV infection, ARC, AIDS, or drug and alcohol use shall not be released to anyone, including the Department of Human Services (DHS) and its representatives, without written consent from the client, or the client's legal representative.
5. Records may be accessed for the purpose of administrative reviews by CAMHD Business Associates and/or authorized agents such as the Department of Health Privacy Officer (HIPAA), and authorized CAMHD and DOE staff, without specific client consents.
6. Exceptions to the requirement of ***consent*** (Pursuant to HRS 334F-5; Administrative Rules 11-175-31).

   Release of confidential information is authorized without a signed release of information under the following conditions:

   a. For management information purposes to the Child and Adolescent Mental Health Division (CAMHD) by the Department's direct contract services,
   b. For monitoring purposes to authorized CAMHD staff,
   c. Within the CAMHD, among staff members directly involved in the care or treatment of the client,
   d. To the DHS, whenever there is reason to believe that a minor child has been or is threatened with abuse or neglect (pursuant to HRS Chapter 350, HRS Chapter 346, Part X & CAMHD P&P 80.405, "Child Abuse or Neglect, Mandatory Reporting of."
   e. When CAMHD staff believed a client poses a serious danger or threat of violence to themselves or another,
   f. As directed by a court,
   g. When required by State or Federal Statutes,
   h. In response to a life-threatening emergency,
   i. To deputy attorney general and their staff who represent the Director of Health involving mental health issues, or
   j. FIMIS data shared between DOH & DOE in accordance with Attorney General's Office policy dated December 24, 1998.

7. Uses and disclosures for which an ***authorization*** or opportunity to agree or object is not required (Pursuant to 45 C.F.R. 164.512).
   a. Disclosures made for purposes of treatment, payment, or healthcare operations;
   b. Standard uses and disclosures required by law including:
      i. Judicial Proceedings including court orders and subpoenas or other discovery requests by a party to a judicial proceeding (and in the course of such proceeding);

ii. Disclosures to law enforcement required by court order, judicial subpoena or summons, investigative demand or other authorized process, warrant, limited information for identification and location of suspects, fugitives, witnesses and missing persons, crime victims, decedents, crime on the premises, crime emergencies (except for abuse), injury reports, or inmates.

iii. Disclosures regarding death including coroner's request and disclosures to funeral directors;

iv. Disclosures for purposes of healthcare oversight including audits, civil, administrative or criminal investigations, licensure or disciplinary actions, civil, administrative, or criminal proceedings or actions, or other activities that are necessary for the appropriate oversight;

v. Disclosures for public health activities as defined in subsection (c) of this P&P.

c. Standard uses and disclosures for public health activities, including to:

i. A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling diseases, injuries, or disabilities, including, but not limited to, the reporting of disease, injury, vital events, such as birth or death and the conduct of public health surveillance, public health investigations, and public health interventions OR at the direction of the public health authority;

ii. A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

iii. A person that may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition if CAMHD is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation.

All exceptions shall be documented, by the authorized personnel who disclosed the information, in the client record, on the unauthorized release of information form.

PROCEDURE

1. Release of Information

A. A signed Consent to Release/Obtain Confidential Information shall be obtained from the client, the client's legal representative and/or guardian, prior to the release of any information. The original of the signed release of information shall be part of the client's clinical record. If the legal representative and/or guardian are not the parent or only one parent (due to divorce, death, etc.), they shall present documentation stating they are the legal representative and/or guardian of the youth.

i. Informed consent is ***not*** required prior to the release of a client's clinical record when there is an emergency or when the consumer transfers between programs having the same direct administrative control over the programs.
ii. Informed consent ***is*** required prior to the release of a client's clinical record when the client is transferring from one service setting to another

B. The consent must:
   i. Identify the person who is authorized to disclose the protected health information;
   ii. Identify the client;
   iii. Describe the nature of and time span of the protected health information to be disclosed;
   iv. Identify to whom the protected health information is to be disclosed;
   v. Describe the purpose of the disclosure;
   vi. State that the consent is subject to revocation; and
   vii. Include the date upon which the consent to disclose ends.

C. If an authorization for the release of patient health information is required, the authorization must:
   i. Describe the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
   ii. The name or other specific identification of the person(s), or class of persons authorized to make the requested use or disclosure;
   iii. The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;
   iv. A description of each purpose of the requested use or disclosure;
   v. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;
   vi. Signature of the individual and date (if the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided);
   vii. Include the following statements:
      a. The individual's right to revoke the authorization in writing, and either: The exceptions to the right to revoke and a description of how the individual may revoke the authorization or to the extent that this information is included in CAMHD's Notice of Privacy, a reference to the Notice;
      b. The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization; and
      c. The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this P&P.

viii. Be written in plain language; and
ix. Be copied and provided to the individual.

D. When programs receive a request for information purportedly signed by the client, the client's legal representative, and/or guardian, the program shall, prior to release:
   i. Contact the source of the consent to release and validate the purpose of disclosure,
   ii. If necessary contact the client and/or the client's legal representative or guardian, to verify the consent and document the verification in the client's clinical record or document why this was not done,
   iii. Limit the information released to that which is specifically relevant to the purpose stated in the request for disclosure (i.e. what is minimally necessary), and
   iv. Stamp all copies of written material being released with the following statement;

   This information shall not be further disclosed without specific written informed consent to release confidential information, or as otherwise permitted by Federal and State Law.

   v. If the request is a Subpoena or Subpoena Duces Tecum, refer to CAMHD P&P 80.404, "Release of Clinical Information Pursuant to a Subpoena or Subpoena Duces Tecum."

E. When programs receive a request for information from person(s) other than the client, the client's legal representative, and/or guardian, the program shall, prior to release:

   i. Verify the identity of the individual requesting protected health information and the authority of that individual to have access to protected health information; and
   ii. Obtain any documentation, statements, or representations, whether oral or written, from the person requesting the protected health information when such documentation, statement, or representation is a condition of the disclosure.

F. Compound Authorization – An authorization for use or disclosure of protected health information may not be combined with any other document to create a compound authorization, except as follows:
   i. Authorizations for the disclosure of protected health information within the same research study; or
   ii. Authorization for the use or disclosure of psychotherapy notes combined with another authorization for the use or disclosure of psychotherapy notes.

G. Disclosure of Psychotherapy notes – CAMHD must obtain an authorization for any use or disclosure of psychotherapy notes, except:
   i. For treatment, payment, or health care operations, or
   ii. For healthcare oversight purposes.

H. Disclosure to Caregivers

   i. CAMHD may disclose PHI to caregivers if directly relevant to that person's involvement with the individual's care or payment for care, so long as:
      a. The individual agrees, or
      b. CAMHD reasonably infers, based on its professional judgment, that it is in the best interest of the individual.

   ii. CAMHD may disclose PHI to notify (or assist in notifying) caregivers, of the individual's location, general condition, or death so long as:
      a. The individual agrees,
      b. CAMHD can reasonably infer, based on its professional judgment, that it is in the best interest of the individual,
      c. CAMHD can reasonably infer, based on its professional judgment and common practice, that it is in the individual's best (practical) interest to allow someone to act on his/her behalf, or
      d. CAMHD is using or disclosing the PHI for disaster relief purposes.

I. Within seven (7) days of a court-ordered release for information, client's and the client's legal representative, and/or guardian shall be informed, verbally and in writing, of the information requested by the court.

J. CAMHD must ensure that all information defined in 42 C.F.R. 431, Subpart F (Safeguarding information on Applicants and Recipients) is protected during the release of the following information:
   i. Client name,
   ii. Address,
   iii. Psychological and medical services provided,
   iv. Social and economic circumstances,
   v. Agency evaluation of personal information,
   vi. Medical data (including diagnoses),
   vii. Educational status, educational information, and
   viii. Information related to medical assistance eligibility and third party coverage.

K. Records and reports not generated by CAMHD shall not be included in information released. Requester may be referred to the generator of such information.

L. Every effort, including use of the telephone, shall be made to expedite the release of information while conforming to this policy.

M. Release of information forms used by other organizations are acceptable as long as they meet the minimum guidelines for release of confidential information.

N. Records may be disclosed, whether or not authorized by the client, to qualified personnel for purposes of scientific research, but these personnel may not identify, directly or indirectly, any individual member in any report of the research or otherwise disclose participant identity in any manner. The Quality Assurance Nursing Supervisor will coordinate all such disclosures and any such disclosures will be approved by the Performance Improvement Standards Committee (PISC) and recorded in the clinical record.

2. Determination of Minimum Necessary

A. In order to comply with the minimum necessary requirements, with respect to a request for disclosure of protected health information, the following must occur:

i. CAMHD Executive Management Team (EMT) members must identify:

a. CAMHD staff, as appropriate, who need access to protected health information to carry out their duties; and

b. For each such CAMHD staff, the category or categories of protected health information to which access is needed and any conditions appropriate to such access.

ii. EMT members must make reasonable efforts to limit the access of authorized staff to protected health information consistent with their roles and scope of access as identified pursuant to 2(A)(i)(a)-(b) above.

iii. For disclosures made on a routine basis, CAMHD must ensure that such disclosures include only that protected health information that is minimally necessary to achieve the purpose of the disclosure.

iv. For disclosures not made on a routine basis, CAMHD must:

a. Limit the disclosures to the information reasonably necessary to accomplish the purpose for which the disclosure is sought, and must do so through:

i. The designated Compliance Officer reviewing the request to identify the specific information being sought and the specific purpose(s) it is being sought for;

ii. If the information or the purpose is not clear, the Compliance Officer must contact, by phone or in writing, the individual or

entity requesting the information, and obtain *written* clarification of the request for disclosure.

iii. If the requested disclosure is determined to not be the minimum necessary to accomplish the stated purpose, the Compliance Officer must make a determination as to whether de-identified information can be disclosed and still accomplish the same purpose.

iv. If the information can be de-identified, it must be de-identified pursuant to the provisions in P&P 80.802, "Disclosure of Clinical Information to the Consumer."

v. CAMHD may reasonably rely on a requested disclosure as the minimum necessary for the stated purpose(s) when the request is permitted by this P&P and made by:

a. Public Officials;
b. A covered entity as defined by 45 C.F.R. 160.103.
c. A professional who is a member of the CAMHD workforce or is a business associate of CAMHD for the purpose of providing professional services to the covered entity, if the professional represents that the information requested is the minimum necessary for the stated purpose(s); or
d. Sufficient documentation or representations have been provided by a person requesting the information for permitted research purposes.

3. FAX Transmission

All FAX transmissions containing protected health information and/or individually identifiable health information, shall conform to the requirements of P&P 80.402.

4. Access to Records

A. Access to records is limited to:

i. The individual,
ii. The parent or legal guardian of the minor child,
iii. Authorized staff, and
iv. Others outside CAMHD whose request for information is permitted by law and is covered by assurances of confidentiality similar to those given by CAMHD and whose access is necessary for administration of involved State programs.

B. CAMHD provides disclosures of clinical information to the consumer pursuant to the provisions in CAMHD P&P 80.802.

Attachments: None

Annual Reviews: _____/_____/_____; _____/_____/_____; _____/_____/_____

Chief's Initials: [_____] [_____] [_____] [_____] [_____] [_____] [_____]

REFERENCE: 45 C.F.R. Parts 160 and 164 (HIPAA); 42 C.F.R. 438.10, 42 C.F.R. 438.100 (Medicaid); 34 C.F.R. Part 99 (FERPA); HRS §92F-21, §622-51	**APPROVED:**
	Signature on File July 21, 2003
	Chief Eff. Date

PURPOSE

To ensure that consumers accessing CAMHD behavioral health services are aware of their rights and responsibilities, and to assure that the consumer's rights are upheld by all CAMHD staff and providers of services.

DEFINITIONS

"Consumer" - Youth with emotional and/or behavioral challenges receiving intensive mental health services from CAMHD. For the purposes of this policy the definition of *"consumer"* shall include the **youth**, parent(s), legal guardian or designated third party representative.

"Enrollee" - Consumers who are enrolled in the CAMHD-Quest behavioral health plan

"Prevalent Non-English Languages" -- means a non-English language spoken by a significant number or percentage of potential consumers and consumers in the State.

POLICY

A. The CAMHD shall inform all consumers of their rights and responsibilities at the first face-to-face meeting following registration through a review of the Consumer Handbook (Handbook). The CAMHD shall provide each consumer and family a copy of the Handbook (See Attachment A) including alternative formats upon request. The alternative formats are translated versions of the Handbook in Ilocano, Tagolog, Chinese, or Korean, and large print or audio for visually or hearing impaired consumers.

B. The rights of consumers who receive services from CAMHD shall be addressed in the Handbook using the following terminology:

1. You have the right to be treated with respect no matter who you are. You also have the right to your privacy.
2. You have the right to treatment no matter what your situation is. You have this right regardless of your:
    - Age
    - Race
    - Sex

- Religion
- Culture
- Lifestyle
- Ability to communicate
- Disability

C. You have the right to know about the CAMHD, the services you can receive and who will provide the services. You also have the right to know what your treatment and service choices are.

3. You have the right to know all your rights and your responsibilities.
4. You have the right to get help from CAMHD in understanding your services.
5. You are free to use your rights. Your services will not be changed nor will you be treated differently if you use your rights.
6. You have the right to receive information and services in a timely way.
7. You have the right to be a part of all choices about your treatment. You have the right to have your treatment plan in writing.
8. You have the right to disagree with your treatment or to ask for changes in your treatment plan.
9. You have the right to ask for a different provider. If you want a different provider, CAMHD will work with you to find another provider in its provider network.
10. You have the right to refuse treatment.
11. You have the right to get services in a way that respects your culture and what you believe in.
12. You have the right to look at your records, and add your opinion when you disagree. You can ask for and get a copy of your records. You have the right to expect that your information will be kept private within the law.
13. You have the right to complain about your services and to expect that no one will try to get back at you. If you complain, your services will not stop unless you want them to.
14. You have the right to be free from being restrained or secluded unless an allowed doctor or psychologist approves, and then only to protect you or others from harm. They can never be used to punish you or keep you quiet. They can never be used to make you do something you don’t want to do. They can never be used to get back at you for something you have done.

D. The Handbook includes the responsibilities of the consumer. The consumer's responsibilities shall be addressed in the Handbook using the following terminology:

1. Your responsibility is to make sure you keep your child's scheduled appointments. If you are going to miss an appointment call the person involved as soon as possible. Ask them to make a new appointment with you.
2. Your responsibility to answer all questions about your child and family in an honest way. This is important so CAMHD can give good care to the your child.
3. Your responsibility is to be a part of your child's assessment and Treatment Plan.
4. Your responsibility is to be a part of your child's Coordinated Service Plan.
5. Your responsibility is to know what is going on with your child's treatment and do your part. This means doing the work that you are assigned to do as part of helping your child.
6. Your responsibility is to treat all people who provide services with respect.

E. The Handbook shall address the following:

1. Written materials that are in easily understood language (sixth grade level) and format
2. Consumers are informed that alternate Handbook formats (***e.g.*** audio, large print) are available and how they can obtain the alternate format information
3. Information that includes basic features of managed care
4. Which populations are excluded from enrollment
5. Populations that are subject to mandatory enrollment
6. CAMHD responsibilities for coordination of consumer's care
7. Summary of service information specific to CAMHD
8. Summary of benefits covered
9. Information about benefits covered under the CAMHD but are not covered under contracts with providers and information on how to access these services
10. Disenrollment rights
11. Providing and informing consumers about Oral Interpretation Services and how to access these services as applicable to all non-English languages
12. Handbook availability in the following languages: Tagalog, Chinese, Ilocano, and Korean
13. A mechanism to help consumers understand the requirements and benefits of their plan, both in writing and via toll-free telephone contact
14. Toll-free access availability twenty-four (24) hours a day, seven (7) days a week
15. Any restrictions on the consumer's freedom of choice among network providers
16. Rights, requirements and timeframes for filing a grievance and/or appeals

17. The availability of assistance with the grievance filing process
18. The toll-free number that the consumer may use to initiate a grievance or an appeal, or request information
19. Written information on the CAMHD's structure and operation
20. The amount, duration and scope of benefits available under CAMHD in sufficient detail to enable the enrollee to understand their benefits
21. Procedures for obtaining services, including the requirements for receiving an authorization for services
22. The extent to which and how consumers may obtain services from out-of-network providers if applicable
23. The extent to which and how after-hours and emergency coverage are provided
24. Information on emergency services, telephone numbers and contacts, and what constitutes emergency medical conditions
25. The fact that an authorization is not necessary for an emergency service
26. Procedures for obtaining emergency services to include use of the 911-telephone system, as applicable
27. Information on post-stabilization service rules covered at §422.113(c), as applicable
28. Information on how to access the referral system for specialty care and for other benefits not furnished by the consumer's primary provider
29. Information on how to access services covered under the State plan but are not covered under the CAMHD contract
30. Information on transportation services
31. Making an appointment
32. Reporting changes in status and family composition
33. Reporting of a third party liability
34. Information regarding use of the membership card
35. Penalties for fraudulent activities
36. Out-of-state or off-island medical services
37. Confidentiality of member information
38. To be treated with dignity and privacy
39. Receive information on available treatment options
40. Participate in decisions

41. To be free from restraint or seclusion
42. To a copy of their medical records
43. Freedom to exercise their rights
44. Rights to refuse treatment

F. The Handbook shall address the following as applicable to consumers who are identified as Quest enrollees:

1. Information on how to file for a State Fair Hearing
2. Information on how a physician or other representative can represent them when filing for a grievance, appeal, or State Fair Hearing
3. Continuation of benefits during an appeal or State Fair Hearing to include: If a recipient requests continuation of benefits during an appeal or State Fair Hearing, they may be required to pay the cost of services furnished while the appeal or hearing is pending, if the final decision is adverse to the recipient
4. Information that the enrollee, the enrollee's provider, or an appointed representative may file a request for an external review of a managed care plan's final internal determination with the State of Hawaii's Insurance Commissioner
5. The right to use any hospital in the State for emergency care, as applicable
6. Information on "significant" changes in the health plan that affect access, timeliness and/or quality of care affecting enrollee's understanding of procedures for receiving care thirty (30) days before the intended effective change
7. Failure to pay for non-covered services will not result in loss of Medicaid benefits

PROCEDURE

A. The CAMHD Quality Operations Supervisor (QOS) shall assure the correctness of the Handbook, that it meets all requirements of the Balanced Budget Amendment and is approved by QUEST.

B. The QOS shall oversee and assure the distribution of the Handbook to all CAMHD Family Guidance Centers (FGC), CAMHD Central Administration for ready availability to consumers at registration and on request. All CAMHD staff have the responsibility to know and uphold the rights and responsibility of consumers listed in the Handbook.

C. The Handbook shall be placed on the CAMHD website to allow providers and other interested parties ready access to it. The QOS shall ensure that providers include the Handbook in their quality assurance training. All providers have the responsibility to know and uphold the rights and responsibility of consumers listed in the Handbook

D. All CAMHD FGC Care Coordinators (CC) will receive training from their Quality Assurance Specialist or staff designated by the FGC Branch Chief on the full content of the Handbook including the consumer rights and responsibilities.

E. The FGC CC shall ensure that all consumers receive a copy of the Handbook and any subsequent editions. At the first face-to-face meeting with the consumer following registration, the CC will review and inform the consumers of their rights and responsibilities. The CC will:

1. Provide consumers with a copy of the rights handbook titled, "Consumer Handbook".
2. Review and explain the contents of the Handbook and, if necessary, offer to obtain an interpreter to give assistance in the explanation.
3. Provide responses to any questions the consumer may have about their rights and about the CAMHD program.
4. Upon completion of the review, have the consumer complete and sign the Consumer Handbook Acknowledgement Form (See Attachment B) indicating the receipt of the Handbook
5. Place the signed Consumer Handbook Acknowledgement Form in the consumer's chart including the date of review with the consumer and the date of their receipt of the Handbook**.**

F. The Handbook will have an edition dated designation on the lower left-hand side of the cover page, ***e.g.***,1st, 2nd, 3rd edition, etc.

ATTACHMENT:

1. Consumer Handbook
2. Consumer Handbook Acknowledgement Form

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION
POLICY AND PROCEDURE MANUAL

SUBJECT: Grievances and Grievance Appeals	**Number:**	**80.603**
	Page:	1 of 19

REFERENCE: Hawaii Administrative Rule§11-175-34; Title 45 C.F.R.§164.502(b), 164.530; 42 C.F.R. §§438.210(d)(2)(i), 438. 406(a)(1), 438.408(c)(2); HRS §334; HRS 622 (Part V), Medical Records	**APPROVED:**
	Signature on File July 15, 2003
	Chief Eff. Date

PURPOSE

To manage a systematic process for registering, tracking, resolving, and reporting grievances and grievance appeals filed by consumers, families, providers, CAMHD personnel, or other concerned parties.

DEFINITION

Aggrieved Party **–** The person who is filing a grievance or on whose behalf the grievance or grievance appeal is being filed.

Consumer – youth with emotional and/or behavioral challenges receiving intensive mental health services from CAMHD. For the purposes of this policy the definition of "*consumer*" shall include the youth, parent(s), legal guardian or designated third party representative.

HIPAA Complaint – Any assertion, whether written or oral, that an unauthorized disclosure of protected health information was made in violation of HIPAA regulations by CAMHD.

Grievance **-** Any oral or written communication, made by or on the behalf of a consumer, provider, and others that expresses dissatisfaction with any aspect of the Child and Adolescent Mental Health Division's (CAMHD) operations, activities, behavior, or providers and its sub-contractor(s).

Grievance Review –A Med-Quest review process of a denied, unresolved, or unfavorable findings and conclusions made at the CAMHD grievance level.

Grievance Appeal **–** A written request made by, or on behalf of a non-Med-QUEST consumer or provider for review by the Grievance Committee of an adverse grievance decision; or for review by the Appeals Board of an adverse Grievance Committee decision.

Grievance Management System (GMS)- The designated system that has the responsibility to address and resolve a grievance or an appeal of an action. The Grievance Office (GO), the CAMHD Privacy Coordinator, and the FGC's QAS are the primary GMS. As a grievance may actually be an appeal of an action, the CAMHD Clinical Services Office (CSO) is also considered a GMS.

POLICY

1. CAMHD shall insure that all consumers and providers are informed of, understand, and make effective use of the grievance and appeal processes outlined in this document. The CAMHD shall inform all consumers and providers of the two portals through which they can access the CAMHD's grievance system and how he/she/they can receive assistance in communicating the grievance.
2. All concerns brought to the CAMHD's attention by anyone shall be addressed, investigated, and resolved in timely fashion as can reasonably be expected, by all parties with a vested interest in the issues at hand.
3. All CAMHD personnel shall cooperate fully with any investigation and resolution of grievances.
4. All corrective measures, deemed warranted, shall be executed in a timely manner.
5. When using or disclosing protected health information or when requesting protected health information from another covered entity, CAMHD must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. 45 C.F.R. §164.502(b). To determine minimum necessary, refer to P&P 80.407, "Release of and Access to Confidential Information About Consumers."

PROCEDURE

I. GENERAL

Upon receipt of a call from a consumer, provider or subcontractor, the FGC or GO staff will interview the person making the call, while at the same time, using the *"CAMHD Discernment Tool*," (**See Attachment 1**) assess the type of call, e.g., inquiry, grievance, appeal, or HIPAA complaint. The FGC or GO staff shall also determine if the person at issue is a Med-QUEST enrollee (through monthly Med-Quest log to be provided by CAMHD's Quest Plan Coordinator).

A. If the issue has been determined to be a grievance, the grievance must be filed with CAMHD within thirty (30) calendar days of the date of the occurrence. Grievances may be filed with CAMHD in the event of dissatisfaction or disagreement with:

1. Availability of mental health services (may be discerned as an action);
2. Delivery of services;
3. Quality of services;
4. Individual staff;
5. Provider agency and its sub-contractors;
6. Payment/Billing;

7. Any aspect of the performance of Family Guidance Center (FGC) staff; or

8. Performance of CAMHD Central Administration Offices or staff.

B. All referrals to the CAMHD shall include the name, address and phone number of the aggrieved party, the nature of the grievance, and documentation of actions taken prior to the referral.

C. All expressions of dissatisfaction, regardless of the degree of perceived seriousness, relating to quality of care, availability and delivery of mental health or support services performed by the CAMHD personnel or the CAMHD contracted providers, shall be investigated and responded to by either the FGC's Quality Assurance Specialists (QAS) or the Grievance Office (GO).

D. Grievances concerning billing, nonpayment or delay in reimbursement will be referred to, investigated and responded to by the CAMHD Billing Appeals Section.

E. HIPAA Complaints, whether from a consumer, provider, or FGC, concerning unauthorized disclosure of protected health information (PHI) in violation of HIPAA regulations, will be initially processed through the GO (e.g., logged into database as a complaint, etc.). The complaint will then be forwarded to the CAMHD Privacy Coordinator for acknowledgement and resolution within HIPAA established Timelines. See P&P 80.603.1, "Individual Right to File Complaints About Compliance with Privacy Policy and Procedures."

F. If the call is determined to be an inquiry, the FGC staff will answer the inquiry log the call into the shared database.

II. GRIEVANCE MANAGEMENT

There are two portals through which a consumer, provider, or its sub-contractor can access the CAMHD's grievance system. The aggrieved party can either phone their FGC and speak with staff or they can call the GO directly. Once staff has determined the type of call, the call will be forwarded to the appropriate GMS. With the exception of grievances that involve FGC QAS investigating sensitive issues, for which the QAS has the option to resolve or forward to the GO (i.e., grievance about administration, etc.), the grievance must be resolved by the GMS that received the call. (**See Flowchart Attachment 2**)

A. Family Guidance Center Portal

Upon the FGC receipt of a call by the consumer or provider, the FGC GMS will:

1. Register the call.

a. The FGC staff taking the call will record caller's name (if different from the aggrieved party, and the aggrieved person's name) and the phone number and address of the aggrieved.

b. The FGC staff will document the name of the assigned MHCC and the date of the call.

2. Document substance of the call.

a. Give consumers any reasonable assistance in completing forms, framing the issues, and taking other procedural steps. This includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capabilities.

b. The FGC staff taking the call will attempt to obtain the general nature of the call. The staff taking the call will note what they perceive as the issue and forward that information to the appropriate GMS.

c. Complete weekly *"CAMHD Grievance Intake Form"* (**See Attachment 3**), and submit to the GO.

3. Discern whether the call is an inquiry, grievance, or an appeal of an action, and link to that GMS.

a. Using the *"CAMHD Discerning Tool,"* the FGC staff will ask the caller a series of questions that will give a preliminary determination of whether the call is an inquiry, an appeal, or a grievance. Once the nature of the call is determined, the FGC staff will:

b. Forward the call to the QAS (if it is a grievance); and

c. Upon receipt of a grievance, FGC personnel will complete the *"Grievances Intake Form."*

d. Resolve the call (if the call is a simple inquiry); or

e. Forward the call to CSO (if the call is an appeal of an action).

f. If the FGC QAS determines that a grievance involves an administrator of the FGC, the QAS has the option to forward the grievance directly to the GO. Should the QAS choose to forward the grievance to the GO, this must be accomplished immediately (within 24-hours of receipt of the grievance), in order for the GO to meet the prescribed Timelines. If the QAS chooses to retain the grievance, the Timelines listed in the "Timelines" section applies and must be adhered to.

g. Should a grievance be retained by the QAS, the QAS must send a *"Letter of Acknowledgement"* acknowledging the receipt of the grievance and reiterating the grievance issues to the aggrieved party within five (5)-days from receipt of the grievance. (**See Attachment 4**)

4. If the call is determined to be a grievance, investigate the substance including all necessary facts to support the reasons for the grievance along with the specific date(s) and time(s). In all investigations of grievances, the FGC staff will fully assist and cooperate with the GO. This includes, but is not limited to, providing all requested documentation and information.

   a. Clinical issues involved:

      1) Obtain issues form the aggrieved party;

      2) Ask the caller what they expect the outcome to be, e.g., just to inform CAMHD, investigate, etc.; and

      3) Interview MHCC and provider.

   b. Obtain all pertinent documentation:

      1) Request all necessary documents in CAMHD's possession from MHCC or QAS (i.e., IEP, CSP, MHTP, etc.,);

      2) Request other necessary documents not in CAMHD's possession (written statements, impressions, etc.), from providers, teachers, etc.; and

      3) Consult the CAMHD CASSP Principles and IPSPG.

   c. Seek clinical, administrative, or other consultation:

      - FGC Clinical Director;
      - MHS and Branch Chief; and/or
      - CAMHD Medical Director (CSO).

5. Make a determination based upon the information obtained from the investigation, within thirty (30) calendar days from receipt of the call, conclude the investigation and make a determination on the issue.

6. Managing clinically urgent grievances.

   a. All clinically urgent grievances, such as abuse, must be addressed by the staff that makes the discovery. That staff is obligated to

make all appropriate referral(s), e.g., sentinel events, police, CPS, etc.

b. Should misconduct, attributed to a provider, be determined as the result of a grievance investigation, the investigating body will also report this information to CAMHD's Credentialing Unit.

7. Timelines.

Pursuant to 42 CFR §438.406 and 45 CFR §160.306(b)(3), it is necessary to follow the timelines for each step of a grievance:

a. *HIPAA Timelines*: 1) 180 days for aggrieved party to file from the day they knew, or should have known of the breach; and 2) 30 days to address and mitigate.

b. *Expedited Appeals*: 1) Immediate verbal acknowledgement; 2) Two (2) days written acknowledgement; and 3) Three (3) Business days resolution. If denied, timeframe shifts to regular appeals process.

c. *Med-Quest Grievances*: 1) Five (5) days to acknowledge; 2) Thirty (30) days to investigate and make a determination Fourteen (14) days extension for cause); 3) Thirty (30) days to file for a Grievance Review (from day of receipt of determination); and 4) Thirty (30) days for Med-Quest to conclude the Grievance Review.

d. *Non-Med-Quest Grievances*: 1) Five (5) days to acknowledge; 2) Thirty (30) days to investigate and make determination (14 days extension for cause); and 3) Thirty (30) days for Grievance Appeals.

All timeframe references to days are "calendar" days, except where business days are mentioned. The aggrieved party or CAMHD can request an extension (if CAMHD can show how the delay is in the recipient's interest).

8. Notify consumers of disposition and appeal rights (emphasize importance/clarity of response).

On, or before the thirty (30)-day investigation period ends and a determination has been made by the QAS, a letter of determination shall be drafted. The content of the letter should: 1) Summarize the issue(s) of the grievance; 2) Explain the decision, the decision making process and logic; and 3) Conclude with a paragraph stating the Aggrieved Party's right to

file for a Med-Quest Grievance Review. The QAS will then forward copies of the determination letters accordingly:

a. The original to the Aggrieved Party;

b. One copy to the GO; and

c. One copy to file.

9. Data tracking/Reporting.

a. The QAS will complete a grievance intake form and log the grievance; and

b. The QAS will forward the log and intake form (each Monday of the following week) to the GO. The GO will enter the grievance into the database.

c. Report all negative grievances in the log and fax to the GO, regardless if the form contains no data.

d. The Care Coordinator or QAS (or PHAO in the QAS's absence) of each FGC is responsible for faxing the "*CAMHD Weekly Information Log*" (**see Attachment 5**) for grievances, grievance appeals, and HIPAA complaints, generated the previous week to the GO by 4:00 p.m. each Monday. If the Weekly Information Log contains a consumer's protected health information (PHI), proper faxing protocol must be followed pursuant to P&P 80.402, "Confidentiality, FAX Transmission."

B. Grievance Office (GO) Portal

Central Administrative Responsibilities include:

1. Grievances concerning fiscal matters by the GO are forwarded to the designated Fiscal Personnel for investigation and response. That Fiscal Staff is responsible for inputting case information in the Grievance Tracking Database System, and for following the procedures in this manual to initiate and complete the investigation.

2. For cases that are referred to the GO for investigation, the GO will assist the aggrieved party in determining the substantive issue(s) of the case and provide the aggrieved party with a written acknowledgement within five (5) workdays from receipt of the grievance. All information will be recorded in the Grievance Tracking Database System. Investigations will begin within seven (7) workdays from the date the complaint is filed.

3. The investigative and resolution portion of the complaint process will not exceed thirty (30) calendar days. It will begin with a discussion with the Care Coordinator regarding the child's history if the nature of the complaint is specific to a child.

4. Extensions are permitted only if exceptional circumstances exist with respect to a particular grievance. Any extension cannot exceed 14 calendar days. The investigating party will maintain documentation on extensions, including the rationale for the extension and the new date for issuance of findings. Exceptional circumstances may include but are not limited to:

   a. The need to review documents or information that will not be available until after the thirty (30)-day time limit;

   b. Unusually complex issues or extraordinarily high volume of documents;

   c. Extensive number of issues; or

   d. Temporary unavailability of individuals with information critical to the complaint.

5. In resolving grievances, the investigating party will follow the CAMHD "Interagency Performance Standards and Practice Guidelines" and all applicable laws. Other Central Administration or FGC staff may be consulted or asked to assist in this fact-finding process. On-site reviews by Clinical Services and Performance Management may be requested as necessary.

6. Response: The investigating party (FGC, GO, or Fiscal Section) will respond to the aggrieved party in writing. The "*Letter of Resolution"* (**See Attachment 6**) must include the following information:

   a. Name and address of the aggrieved party;

   b. Date of notification and date when grievance was originally filed with the GO;

   c. Name of the staff investigator;

   d. Findings;

   e. Corrective action plan, if needed, and

   f. A concluding paragraph (for Med-QUEST consumers only) that states: "This letter represents CAMHD GO's resolution of the issues raised by your grievance. If you wish to pursue this matter to the next level, you may do so by submitting a request (written or

oral) for a Grievance Review with the Med-QUEST Office within thirty (30) calendar days of this notice. You can call (808) 692-8093 or 692-8096 (ask to speak with the QUEST Plan Liaison). Or, you can write in care of: Med-QUEST Division, Health Coverage Management Branch, 601 Kamokila Blvd., #506, Kapolei, Hawaii, 96707."

g. For non-Med-QUEST consumers, the concluding paragraph must state: "*This letter represents CAMHD GO's resolution of the issues raised by your grievance. If you wish to pursue this matter to the next level, you may do so by submitting your first level appeal to the CAMHD GO within 30 days of this notice. The CAMHD Grievance Committee will hear the first level appeal. Please send your written request together with any supporting documentation to the CAMHD Grievances and Appeals Office, 3627 Kilauea Ave., Room 101, Honolulu, HI 96816. Should you have any questions you may contact the GO at 733-8495.*"

h. In grievances involving direct service providers and delegted activites contractors, a copy of the Resolution letter should be provided to the Credentialing Unit or other CAMHD administrative section as applicable (***i.e.***, performance monitoring unit).

7. Calls To The GO

Upon the GO receipt of a call by the consumer, third party representative, or provider, the GO GMS will:

a. Register the call.

1) The GO taking the call will record:

2) Callers name (if different from the aggrieved party, and the aggrieved person's name), phone number and address of the aggrieved party;

3) The consumer's client record (CR) number and/or Med-Quest ID number;

4) The assigned MHCC;

5) The date of the call; and

6) Log grievance into the GO Database.

b. Document substance of the call.

The GO staff taking the call will attempt to obtain the general nature of the call and note what they perceive as the issue and either resolve the grievance within prescribed timelines, or forward that information to the appropriate GMS.

c. Discern whether the call is an inquiry, grievance, or an appeal of an action, and link to that GMS.

1) Using the Discerning Tool, the GO staff will ask the caller a series of questions that will give a preliminary determination of whether the call is an inquiry, a grievance, or an appeal of an action. Once the nature of the call is determined, the GO will:

2) Resolve the call (if the call is a simple inquiry);

3) Address the grievance as noted above;

4) Should a grievance be retained by the GO, the GO must send a letter of acknowledgement to her aggrieved party within five (5) days from receipt of the grievance.

5) Forward the call to CSO (if the call is an appeal of an action); or

6) Forward the complaint to the CAMHD Privacy Coordinator (if the call is a HIPAA issue).

d. If the call is determined to be a grievance, investigate the substance including:

1) Clinical issues involved:

(a) Obtain issues form the aggrieved party;

(b) Ask the caller what they expect the outcome to be, e.g., just to inform CAMHD, investigate, etc.; and

(c) Interview MHCC and provider.

2) Obtain all pertinent documentation:

(a) Request all necessary documents in CAMHD's possession from MHCC or QAS (i.e., IEP, CSP, MHTP, etc.);

(b) Request other necessary documents not in CAMHD's possession (written statements,

impressions, etc.), from providers, teachers, etc.; and

(c) Consult the CAMHD CASSP Principles and IPSPG.

3) Seek clinical, administrative, or other consultation from:

- FGC Clinical Director;
- MHS and Branch Chief; and/or
- CAMHD Medical Director (CSO).

e. Make a determination based upon the information obtained from the investigation, within thirty (30) calendar days from receipt of the call, the GO will conclude the investigation and make a determination on the issue(s).

f. Managing clinically urgent grievances.

1) The staff that makes the discovery must address all clinically urgent grievances, such as abuse. That staff is obligated to make all appropriate referral(s), e.g., sentinel events, police, CPS, etc.

2) Should misconduct, attributed to a provider, be determined as the result of a grievance investigation, the investigating body will also report this information to CAMHD's Credentialing Unit.

g. Timelines.

Pursuant to 42 CFR §438.406 and 45 CFR §160.306(b)(3), it is necessary to follow the timelines for each step of a grievance:

1) *HIPAA Timelines*: 1) One hundred and eighty (180) days for aggrieved party to file from the day they knew, or should have known of the breach; and 2) thirty (30) days to address and mitigate.

2) *Expedited Appeals*: 1) Immediate verbal acknowledgement; 2) two (2)-day written acknowledgement; and 3) three (3) Business Day resolution. If denied, timeframe shifts to regular appeals process.

3) *Med-Quest Grievances*: 1) Five (5) days to acknowledge; 2) thirty (30) days to investigate and make a determination fourteen (14) days extension for cause); 3) thirty (30) days

to file for a Grievance Review (from day of receipt of determination); and 4) thirty (30) days for Med-Quest to conclude the Grievance Review.

4) *Non-Med-Quest Grievances*: 1) five (5) days to acknowledge; 2) Thirty (30) days to investigate and make determination fourteen (14) days extension for cause); and 3) Thirty (30) days for Grievance Appeals.

All timeframe references to days are "calendar" days, except where business days are mentioned. The aggrieved party or CAMHD can request an extension (if CAMHD can show how the delay is in the recipient's interest).

h. Notify consumers of disposition and appeal rights (emphasize importance/ clarity of response).

Once the GO staff has made a determination, a letter of determination shall be drafted. The content of the letter should: 1) Summarize the issue(s) of the grievance; 2) Explain the decision, the decision making process and logic; and 3) Conclude with a paragraph stating the Aggrieved Party's right to file for a Med-Quest Grievance Review. The GO will then forward copies of the determination letters accordingly:

1) The original to the Aggrieved Party;

2) One copy to the Supervisor of Performance Management; and

3) One copy to file.

i. Data tracking/Reporting.

1) The GO staff will receive and track the intake form from the QAS and log and enter the data into the GO database; and

2) The GO staff will enter the grievance and its resolution into the Grievance database.

3) The GO will generate all tracking and trending reports/analysis and submits the reports to the appropriate committees, i.e., PISC Report and Med-Quest Division Report.

III. ACTIONS

A. If the FGC staff determines that the nature of the call is regarding an action, the call is immediately referred to the QAS.

B. The QAS will (within twenty-four (24) hours of receipt of call) forward the Aggrieved Party to the Clinical Services Office (CSO).

C. Appeals, along with applicable Timelines, are addressed pursuant to P&P 80.604, "Denial of Services, Appeals, and the State Fair Hearing Process."

D. If the GO determines that the nature of the call is in regard to an action, the GO will immediately forward the call, along with all pertinent information the GO receives, to CSO for resolution.

IV. OTHER CENTRAL ADMINISTRATION OFFICE (CAO) DUTIES

A. DOE: The GO may assist the Complaints Resolution Office of the Department of Education to investigate mental health related complaints about Felix youths filed with the DOE. The investigation will follow DOE complaint procedures.

B. Files: All grievances files will be maintained in a secured file marked with the grievance case number and the name of the aggrieved party.

C. QAS Training on the Grievances Process: The CAO will train all QAS on the grievance process in order to assure consistent application of the process and procedures at the FGC level. The training will occur annually, at new employee orientation for the QAS, and when changes in the grievances process warrants re-training. The training will also explain the function and procedural process of grievances and appeals at the GO level. Training will include, but is not limited to:

1. Logging all grievances received at the FGC level, whether resolved by the QAS or referred to the GO;
2. The completion and submission of weekly reports to the GO for the purpose of tracking and trending;
3. The role of the FGCs and the GO in the grievance process; and
4. The exchange of critical case information between the GO and QAS.

V. GRIEVANCE REVIEW (Med-QUEST)

A. Consumers, families or providers who disagree with the findings and decisions at the grievance level may file for a "Grievance Review" with the Med-QUEST Division. Grievances reviews must be filed within thirty (30) calendar days of the date stated on the GO's findings and decisions letter.

1. All requests for a grievance review must be submitted to the Med-QUEST Division. Med-QUEST consumers can either call or write to request a grievance review at:

   Med-QUEST Division
   Health Coverage Management Branch
   601 Kamokila Blvd., #506
   Kapolei, Hawaii 96707
   (808) 692-8093 or 692-8096

   The Med-QUEST Plan Liaison must review the grievance and contact the recipient with a determination within thirty (30) calendar days from the day he/she received the request for a grievance review.

2. The grievance review determination made by the Med-QUEST staff is final.

VI. GRIEVANCE (Non-Med-QUEST)

The procedure and applicable Timelines for non-Med-QUEST grievances will be the same as Med-QUEST grievances. However, the appeal rights for non-Med-QUEST consumers will be handled according to internal CAMHD appeals protocol exclusive of Med-QUEST Division. Non-Med-Quest grievances must be filed with the GO within thirty (30) days of its occurrence or thirty (30) days from the time the aggrieved party knew, or should have known, of the grievance.

A. Investigation of the grievance will be initiated within seven (7) workdays from the date the grievance is filed. The grievance process will not exceed thirty (30) calendar days. Extensions are permitted only if exceptional circumstances exist with respect to a particular grievance. Any extension will be for a specified duration of time, not to exceed fourteen (14) days. The investigating party will maintain documentation on extensions, including the rationale for the extension and the new date for issuance of findings. Exceptional circumstances may include but are not limited to:

   1. The need to review documents or information that will not be available until after the thirty (30) calendar day time limit;
   2. Unusually complex issues or extraordinarily high volumes of documents;
   3. Extensive number of issues;
   4. Temporary unavailability of individuals with information critical to the grievance; and
   5. Scheduling conflicts of the Grievance Committee.

B. Investigation Process (Non-Med-QUEST)

1. The GO will receive written grievances, forwarding those that are fiscally related to the Fiscal Office. Information related to all grievances shall be reviewed to insure all areas of the complaint processes have been exhausted prior to opening the grievance. Further fact-finding shall be conducted of any significant new information brought forth by the written grievance.

2. The GO or the Fiscal Office, as applicable, will notify the grieving party in writing of the receipt of the grievance. Either the GO or the Fiscal Office as applicable shall enter case information into the shared Grievance Tracking Database System.

3. The GO shall prepare non-fiscal grievance reports for the Grievance Committee's review, including any applicable new fact-finding information; the Fiscal Office will do the same for fiscal-related grievances.

4. All grievances pursuant to 42 CFR §438.400(b)(6), shall be addressed by the GO following the established guidelines and Timelines defined by Med-Quest.

C. The Grievance Committee (Non-Med-QUEST)

1. Grievances are presented to the CAMHD Grievance Committee at the next regularly scheduled meeting following the conclusion of the investigation. The Committee generally meets on the first and third Tuesday of each month. The Committee will consist of a quorum of the following members: Clinical Director, Performance Management Supervisor, Provider Relations Officer, Family Guidance Center Representative, Fiscal Representative and a parent representative.

2. The Committee will render a decision upon hearing and reviewing the grievance report. This determination will be reported in writing to the grieving party within ten (10) working days of the decision. The party responsible for presenting the grievance at the Committee meeting will prepare the response. The written response to the grieving party must include the following information:

   a. Name and address of the grieving party;

   b. Findings of the Grievance Committee;

   c. Corrective action plan;

   d. Agreement, if applicable; and

e. For all adverse decisions to a grievance, a concluding paragraph that notifies the grieving party of their right to file an appeal, how to file the appeal, the timeline to filing, and the address of the GO.

f. In the matter of fiscal grievances, CAMHD reserves the exclusive right to determine whether or not to engage in a settlement process.

g. The grievance files will be maintained in a file marked with the grievance case number and the name of the grieving party. These files will be controlled as sensitive material and will be maintained on premises by the GO Office in a secure file cabinet.

D. Settlement Process (Non-Med-QUEST)

1. The Grievance Committee will consider the following factors in determining whether a settlement shall be offered based on the following factors:

a. Whether denial of the grievance will have a significant impact on the agency's ability to continue providing services to Felix identified children and youths. The existence of a significant impact will be determined by looking at the following:

1) The amount requested/being appealed.

2) The percentage of the appealed amount to the total amount the grieving party has billed CAMHD encompassing the preceding year to date.

b. Acceptable alternative documentation as proof of the provision of services consisting of:

1) Clear evidence that the services in question were provided.

2) The seriousness of the billing deficiency in relation to the compliance with the documentation requirements of the Contract Management Standards, per level of care at issue.

c. The lack of evidence of a pattern of fraud and/or abuse.

d. The impact on CAMHD's ability to provide services to Felix identified children and youths.

2. Following a compilation of documentation related to all of the above factors, the Billing Appeals Office will present a written summary accompanied with a recommendation for offer of settlement for the Grievance Committee's consideration and decision.

3. It is within the CAMHD's sole discretion to determine the amount offered to a grieving party.

4. The Grievance Committee's decision stands in the event a settlement is not offered.

5. Following a decision to offer a settlement, the Billing and Appeals Office will send a written response to the grieving party that includes the following information:

   a. Name and address of the grieving party;

   b. Findings of the Grievance Committee;

   c. Corrective action plan, if needed; and

   d. Agreement, if needed.

E. APPEALS (Non-Med-QUEST)

The aggrieved party may file a written appeal (2nd level appeal) with the GO if they disagree with the determination of the Grievance Committee. An appeal of the Committee's decision must be filed within thirty (30) calendar days of the date stated on the determination letter. It must include: (a) The reasons the complainant believes the Grievance Committee's decision was in error; (b) All necessary facts and documents to support the reasons for appeal; (c) Any new information that was previously unavailable together with the reasons why the new information was not previously available; and, (d) If applicable, a description of any extenuating circumstances. The Complaint's Office may dismiss a request for appeal if the request for appeal does not meet the foregoing requirements, for good cause, or where the request for appeal is frivolous and without merit. Any dismissal of a request for appeal shall be in writing and state the reasons for dismissal.

1. The GO or the Fiscal Office as applicable, upon receipt of the written appeal, will review the information to ensure all areas of the grievance process have been exhausted prior to opening the appeal. The applicable office will enter all pertinent information into the Grievance Tracking Database system and the appealing party notified in writing of the receipt of the appeal.

2. The appealing party has the right to submit documentation in support of the appeal or appear in person before the Appeals Board. The GO or the Fiscal Office as applicable will inform the appealing party of the appeal date as soon as one can be scheduled.

3. A synopsis of the case on appeal will be prepared by the GO (non-fiscal cases), or the Fiscal Section (fiscal cases). The GO will coordinate the forwarding of the synopsis to the Appeals Board for briefing purposes.

4. Pursuant to HAR §11-175-34(c), the appeals process will not exceed thirty (30) calendar days from receipt of the appeal. Extensions are permitted only if exceptional circumstances exist with respect to a particular appeal. Any extension will be for a specific amount of time. The GO or the Fiscal Office as applicable will maintain documentation on the extension, including the rationale for the extension and the new date for issuance of findings. Exceptional circumstances may include but are not limited to:

    a. The need to review documents or information that will not be available until after the 30-day time limit.

    b. Unusually complex issues or extraordinarily high volume of documents;

    c. Extensive number of issues; or

    d. Temporary unavailability of individuals with information critical to the appeal; and

    e. Scheduling conflicts of the Appeals Board.

5. If CAMHD extends the timelines, it must – for any extension not requested by the consumer, give the consumer written notice of the reason for the delay.

    a. The CAMHD Appeals Board consists of the Deputy Director for Behavioral Health, the CAMHD Chief and the Medical Director.

    b. After the consumer files an appeal and before the Appeals Board hears the case, the GO and the Fiscal Section may engage in efforts at settlement with the appealing party. The procedures for settlement outlined in the "Settlement Process Section," will be followed.

    c. The Appeals Board, after hearing and reviewing the appeal, will render a decision. This decision will be reported in writing to the appealing party within ten (10) working days of the decision. The decision of the Appeals Board will be the final response from the CAMHD.

    d. Appeal files will be maintained in a file marked with the appeal case number and name of the appealing party. These files will be

controlled as sensitive material and will be maintained on premises in a secure file cabinet.

F. DISMISSAL (Non-Med-QUEST)

The CAMHD has the discretion to dismiss a grievance or appeal at any time upon written request from the initiating party. Or when a complainant has failed to pursue or present their case, after reasonable notice by the CAMHD, after one (1) year of the initiation of the grievance or appeal. Upon a showing of good cause, the aggrieved party can request a reinstatement of their case.

VII. CONFIDENTIALITY/HANDLING

Access to records will be limited to those staff members directly involved in the investigation of the grievance or appeal as well as managerial staff on a need to know basis. When not in use, records will be stored in a locked drawer or cabinet. Records will not be left unattended or unsecured in the workplace, or in a position or location easily accessible to non-staff members.

VIII. RECORD RETENTION

All records of persons served by CAMHD will be maintained in a protected and confidential manner for time periods consistent with applicable laws.

A. Records pertinent to minors shall be maintained for a period of twenty-five (25) years from the date of majority.

B. The CAMHD will maintain records of all grievances and appeals for two years on site (current and last calendar year), with the remaining years being maintained in secure storage.

ATTACHMENTS:

1. CAMHD Discernment Tool
2. CAMHD Grievance Flow Chart
3. CAMHD Grievance Intake Form
4. CAMHD Sample Letter of Acknowledgement
5. CAMHD Weekly Grievance Information Log
6. CAMHD Letter of Resolution

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.603.1** Effective Date: April 2, 2003 History: New
SUBJECT: Individual Right to File Complaints About CAMHD's privacy policies and procedures or its Compliance with Privacy Policies and Procedures REFERENCE: 45 C.F.R. §164.530, 164.526, 164.520; 45 C.F.R. §160.306(a), (b), 160.310; 34 C.F.R. Part 99; HAR §11-175-34	Page: 1 of 5 APPROVED: ***Signature on File*** Chief

PURPOSE

To outline a process whereby a complaint made by an individual about CAMHD's privacy policies and procedures or its compliance with such policies and procedures is received, documented and processed.

POLICY

Individuals may make a complaint regarding CAMHD's privacy policies and procedures or its compliance with such policies and procedures regarding both the Health Insurance Portability and Accountability Act (HIPAA), and the Family Educational Rights and Privacy Act (FERPA). Individuals who file a complaint as described in this Policy may do so without intimidation, threat, coercion, discrimination against, or other retaliatory action by CAMHD. No individual will be required to waive his or her right to file a complaint. The receipt and disposition, if any, of all complaints shall be documented. Should a complaint be filed with the Secretary of the Department of Health and Human Services (Secretary) against CAMHD, CAMHD and its Privacy Coordinator will cooperate with the complaint investigation and compliance review.

CAMHD will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against:

1. Any individual for the exercise by the individual of any right under, or for participation by the individual in any process established by this subpart, including the filing of a complaint under this section;

2. Any individual or other person for:

    a. Filing of a complaint with the Secretary;

    b. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing under Part C of Title XI; or

    c. Opposing any act or practice made unlawful by this subpart, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of the opposition is reasonable and does not

involve a disclosure of protected health information in violation of this subpart.

PROCEDURE

A. CAMHD's Notice of Privacy Practice shall contain (1) a statement that individuals may file a complaint as described below if they believe their privacy rights have been violated, (2) how they may file a complaint, and (3) that the individual will not be retaliated against for filing a complaint or be required to waive his or her right to complain. Complaints received by a Family Guidance Center must be forwarded to CAMHD's Privacy Coordinator within one working day.

B. Complaints may be filed with:

1. CAMHD's Privacy Coordinator at:

   Privacy Coordinator, CAMHD
   3627 Kilauea Avenue, Room 101
   Honolulu, Hawaii 96816; or

2. The Department of Health's Privacy Officer at:

   Office of Planning Policy and Program Development
   1250 Punchbowl Street
   Honolulu, Hawaii 96813
   (808) 586-4192; or

3. The Secretary of the U.S. Department of Health and Human Services – The address and specific requirements for filing of complaints to DHHS is as follows:

   DHHS address:
   Office of Civil Rights
   Medical Privacy, Complaint Division
   U.S. Department of Health and Human Services
   200 Independence Avenue, S.W., HHH Bldg., Room 509H
   Washington, DC 20201
   Phone: (866) 627-7748
   TTY: (886) 788-4989
   E-mail: www.hhs.gov/ocr

C. All complaints must be filed in accordance with the following format and procedural requirements:

1. Must be filed in writing, either on paper or electronically;
2. Must name the entity that is the subject of complaint;
3. Describe the act(s) or omission(s) believed to be in violation; and
4. Must be filed within 180 days of when the complainant knew or should have known that the act/omission complained of, unless the time limit is waived by the Secretary for good cause shown

D. For privacy complaints made to CAMHD, CAMHD shall document all complaints received and their disposition, if any. Documentation shall be retained for six years from the date of its creation. 45 C.F.R. §164.530(d)(2), (j)(2).

E. Upon receipt of a privacy complaint, the CAMHD Privacy Coordinator will record and process the complaint within five working days. The Privacy Coordinator will draft a written response to the complainant and acknowledge the nature and receipt of the complaint. A copy of the complaint will then be forwarded to the DOH Privacy Officer. Once the CAMHD Privacy Coordinator reaches a resolution of the complaint, a copy will be mailed to the complainant and to the DOH Privacy Officer, with a copy retained in file.

F. For complaints implicating FERPA, a parent or eligible student must:

1. File the complaint in writing;
2. Be timely. A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation (The Office may extend the time limit in this section for good cause shown); and
3. Specify allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.
4. File complaint with:

Family Policy Compliance Office
U.S. Department of Education,
400 Maryland Avenue, S.W.,
Washington, DC 20202-4605

G. If CAMHD denies a request by a parent or eligible student to amend educational records pursuant to 20 U.S.C. 1232g(a)(2) (FERPA), CAMHD shall inform the parent or eligible student of its decision and of his or her right to a hearing. The conditions where a parent or eligible student have the right to a hearing. The minimum requirements to conduct a hearing are listed in G.4, below.

1. An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.
2. If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall:
    a. Amend the record accordingly; and
    b. Inform the parent or eligible student of the amendment in writing.
3. If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.
4. If an educational agency or institution places a statement in the education records of a student under G.2.a-b of this section, the agency or institution shall:
    a. Maintain the statement with the contested part of the record for as long as the record is maintained; and
    b. Disclose the statement whenever it discloses the portion of the record to which the statement relates.
5. The minimum requirements for the conduct of a hearing are:
    a. The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.
    b. The educational agency or institution shall give the parent or eligible student notice of the date, time, and place reasonably in advance of the hearing.
    c. The hearing may be conducted by any individual, including an official, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.
    d. The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues

raised under Reg. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

e. The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

f. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.802** Effective Date: January 24, 2003 History: 8/15/95
SUBJECT: Disclosure of Clinical Information to the Consumer REFERENCE: Administrative Rule 11-175; Title 42 C.F.R. 431, Subpart F; Title 45 C.F.R. 160, 164	Page: 1 of 9 APPROVED: ***Signature on File*** Title: Chief

PURPOSE

To establish guidelines for handling a consumer's request for copies of his/her mental health records.

DEFINITION

"*Designated Record Set*" means a group of records maintained by or for CAMHD that is: (1) The medical records and billing records about individuals maintained by or for a health care provider covered by 45 C.F.R. 160, 164; (2) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (3) Used, in whole or in part, by or for CAMHD to make decisions about individuals.

"*Health Care Operations*" means any of the activities of CAMHD included within the definition as provided for in 45 C.F.R. 164.501.

"*Psychotherapy Notes*" – Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private, group, joint, or family counseling session *that are separated from the rest of the individual's medical record, but do not include*: (1) Medical prescription and monitoring; (2) Counseling session start and stop times; (3) Modalities/frequencies of treatment; (4) Results of clinical tests; or (5) A summary of diagnosis, functional status, treatment plan, symptoms, prognosis, or progress.

"*Statement of Disagreement"* – Written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement.

POLICY

1. An individual (or that person's personal representative) has a right of access to inspect and obtain a copy of protected health information about that individual in a designated record set, for as long as the information is maintained in a designated record set, except for

A. Psychotherapy notes; and

B. Information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding.

2. Authorized CAMHD staff are permitted to use or disclose protected health information as follows:

A. To the individual;

B. For treatment, payment, or health care operations;

C. Incident to a use or disclosure otherwise permitted or required by established CAMHD P&Ps;

D. Pursuant to and in compliance with an authorization that complies with P&P 80.407, "Release and Access to Confidential Information About Consumers;" and

E. Pursuant to an agreement otherwise permitted by 45 C.F.R. 164.510.

3. Authorized CAMHD staff are required to disclose protected health information:

A. To an individual whose request complies with the provisions of this P&P; and

B. When required by the Secretary of the Department of Health and Human Services in their investigation or review of CAMHD's compliance with 45 C.F.R. 160, 164.

4. Only materials generated by the Child and Adolescent Mental Health Division (CAMHD) and its contracted provider agencies shall be considered part of a consumer's clinical record.

5. The consumer or the consumer's parent or legal guardian shall not be permitted to alter or remove documents from the clinical record.

6. Information and communication identifying any individual with a history of HIV infection, ARC, AIDS, or drug and alcohol use shall not be released to anyone, including DHS and its representative, without written consent from the client, or the client's legal representative.

7. Reviewable grounds for denial include:

A. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;

B. The protected health information makes reference to another person (unless the other person is a health care provider) and a licensed health care professional has determined in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or

C. The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

8. Unreviewable grounds for denial include:

A. The protected health information is included in an individual's request for the restriction of uses and disclosures of their protected health information as detailed in the Procedures below.

B. The protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research.

C. An individual's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. § 552a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.

D. The protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

9. An individual has a right to receive an accounting of disclosures of protected health information made by a covered entity in the six (6) years prior to the date on which the accounting is requested, except for disclosures:

A. To carry out treatment, payment and health care operations;

B. To individuals of protected health information about them;

C. Incident to a use or disclosure otherwise permitted or required by CAMHD P&Ps and federal and state laws;

D. Pursuant to an authorization as provided for in P&P 80.407;

E. For national security or intelligence purposes;

F. To correctional institutions or law enforcement officials;

G. As part of a limited data set; or

H. That occurred prior to the compliance date for the covered entity.

PROCEDURES

1. CAMHD must document and retain documentation of the designated record sets that are subject to access by individuals.

2. An individual requesting access to his/her designated record set must submit the request in writing to the CAMHD Privacy Coordinator for approval. All requests must be received at 3627 Kilauea Ave., Room 101, Honolulu, Hawaii 96816.

3. Once the request has been approved:

   A. For records maintained at the Central Office, CAMHD's Privacy Coordinator shall be responsible for receiving and facilitating the responses to requests for access by consumers or their personal representatives.

   B. For records maintained at the FGCs/CAMHD Branches, the Privacy Coordinator will forward the approved request(s) to the QA Specialists. The QA Specialists will be responsible for receiving and facilitating the responses to requests for access by consumers or their personal representatives.

4. Within 30 days after receipt of a request, a designated CAMHD staff member must:

   A. If granting, in whole or in part, inform the individual of the acceptance of the request and provide the access requested, in accordance with the provisions of this P&P.

   B. If denying the request in whole, or in part, provide the individual with a written denial, in accordance with the provisions of this P&P.

   C. If unable to take an action required in (a) or (b) above, within the time required, as applicable, CAMHD may extend the time for such actions by no more than 30 days, provided that:

      1) CAMHD provide the individual, within the original 30 days, with a written statement of the reasons for the delay and the date by which CAMHD will complete its action on the request; and

      2) CAMHD may only extend its time for action once, on a request for access to a designated record set.

5. If CAMHD provides an individual with access, in whole or in part, to his/her protected health information, CAMHD must:

   A. Provide the access requested, including opportunity to inspect or obtain a copy, or both, of the protected health information about them in designated record sets. If the same protected health information is in more than one designated record set, CAMHD need only produce the information once, in response to a request for access.

B. Provide the information in the form or format requested by the individual, if it is readably producible in such form or format; or, if not, in a readable hard copy form or such other form or format as agreed to by CAMHD and the individual.

1) If the individual agrees, in advance, to receiving a summary or explanation of the protected health information requested in lieu of the entire record and also agrees to the fees imposed, if any, for such a summary or explanation, CAMHD may provide a summary or explanation.

C. Arrange with the individual for a convenient time and place to inspect or obtain a copy of the protected health information, or mailing the copy of the protected health information at the individual's request.

6. CAMHD shall impose reasonable, cost-based fees, for providing access to protected health information in a designated record set. This fee shall only include the cost of:

A. Copying, a fee of five (5) cents per page will be charged for supplies and labor of copying the protected health information requested by the individual; and

B. Postage, when the individual has requested a copy of the PHI to be mailed.

7. If CAMHD denies access in whole, or in part, CAMHD must:

A. To the extent possible, give the individual access to any other protected health information requested, after excluding the protected health information as to which CAMHD has a ground to deny access;

B. Provide a timely, written denial to the individual and the denial must be in plain language and contain:

1) The basis for the denial;

2) If applicable, a statement of the individual's right to appeal this determination in writing to the CAMHD at 3627 Kilauea Ave., Room 101, Honolulu, Hawaii 96816; and

3) A description of the CAMHD and Department of Health and Human Services (DHHS) processes for filing a complaint should the individual wish to file a complaint with either or both, including contact name or title, and telephone numbers.

C. Inform the individual, if CAMHD has knowledge, of where to direct the request for access if the reason for the denial was that CAMHD does not maintain the protected health information being requested.

D. If the individual has requested a review of a denial, designate a licensed health care professional, who was not directly involved in the denial to review the decision to

deny access, and must also promptly refer the request for review to the designated licensed health care professional.

1) The designated professional must determine, within a reasonable period of time, whether or not to deny the access requested based on the standards established within the definitions of "reviewable" and "unreviewable" grounds for denial.

2) CAMHD must promptly provide written notice to the individual of the determination of the official and take other action as required by these P&Ps to carry out the designated official's determination.

8. If the consumer or the consumer's parent or legal guardian objects to any portion of the record, the consumer shall be permitted to request that CAMHD amend the protected health information maintained in the designated record set. This request must be in writing and must state the reason(s) for the requested amendment.

A. The request can be submitted to the appropriate FGC Branch Chief or Executive Management Team (EMT) member and they, with at least one other professional staff, shall review the objected to portions of the record.

B. Action on the individual's request must occur within 60 days after receipt of the request, as follows:

1) If CAMHD grants the requested amendment, in whole or in part, the amendment must be made by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

a. If the information in the record is to be modified, the original record shall remain unaltered. A dated and signed addendum, which modifies the objected to portions of the record, shall be added to the clinical record.

2) If accepted, appropriate FGC Branch Chiefs or EMT members must timely inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to have CAMHD notify the relevant persons with which the amendment needs to be shared. Reasonable efforts must be made to inform and provide the amendment to:

a. Persons identified by the individual as having received protected health information about the individual and needing the amendment; and

b. Persons, including business associates, that CAMHD knows has the protected health information that is the subject of the amendment

and that may have relied, or could foreseeably rely, on such information to the detriment of the individual.

3) If the amendment is denied, in whole or in part, CAMHD must:

a. Provide the individual with a timely, written denial that uses plain language and contains:

i. The basis for the denial;

ii. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement (maximum length is one page);

iii. A statement that if the individual does not submit a statement of disagreement, the individual may request that CAMHD provide the individual's request for amendment and the denial with any future disclosures of the protected health information that is the subject of the amendment; and

iv. A description of how the individual may file a complaint with CAMHD pursuant to P&P 80.603 or to the Secretary of Health and Human Services pursuant to 45 C.F.R. 160.306, including the name or title, and telephone number of the contact person or office designated.

b. CAMHD can deny an individual's request for amendment, if it is determined that the protected health information or record that is the subject of the request:

i. Was not created by the covered entity, unless the individual provides a reasonable basis to believe that the originator of protected health information is no longer available to act on the requested amendment;

ii. Is not part of the designated record set;

iii. Would not be available for inspection; or

iv. Is accurate and complete.

c. CAMHD may prepare a written rebuttal to the individual's statement of disagreement and must provide a copy to the individual who submitted the statement of disagreement.

C. When CAMHD receives a notice of amendment from another entity involved with a consumer's care, CAMHD shall amend the protected health information in the affected designated record set.

9. Documentation in the clinical record regarding consumer access and accounting of disclosures shall include:

   A. Whether the record was reviewed, read and/or a copy provided to the consumer or consumer's parent, legal guardian or attorney.

   B. The applicable portions withheld, rationale for withholding information, and the date and staff person who explained the appeals process to the consumer.

   C. An accounting of disclosures meeting the following requirements:

      1) The date of the disclosure;

      2) The name of the entity or person who received the protected health information and, if known, the address of such entity or person;

      3) A brief description of the protected health information disclosed; and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure, if any.

   D. If multiple disclosures were made to the same person or entity for a single purpose, the accounting may provide:

      1) The information required by 9C(i)-(iv) above;

      2) The frequency, periodicity, or number of the disclosures made during the accounting period; and

      3) The date of the last such disclosure during the accounting period.

10. Authorized CAMHD staff must act on the individual's request for an accounting, no later than 60 days after receipt of such a request, as follows:

   A. CAMHD must provide the individual with the accounting requested; or

   B. If CAMHD is unable to provide the accounting within the time required, the CAMHD may extend the time to provide the accounting by no more than 30 days, provided that;

      1) CAMHD, within the original 60 day time limit, provides the individual with a written statement of the reasons for the delay and the date by which CAMHD will provide the accounting; and

      2) Extension of time can only occur once.

   C. The first accounting to an individual in any 12 month period, must be provided without charge. After which, CAMHD may impose a reasonable, cost-based fee for each subsequent request by the same individual within the 12 month period.

CAMHD shall notify the individual in advance, of the fee and provide them with an opportunity to withdraw or modify the request.

11. CAMHD shall temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, respectively, for the time specified by such agency or official, if such agency or official provides the covered entity with a written statement that such an accounting to the individual would be reasonably likely to impede the agency's activities and specifying the time for which such a suspension is required.

12. If an attorney for a consumer presents a proper authorization to release copies of the clinical record, the record shall be given to the attorney within ten (10) working days.

Attachments: None

Annual Reviews: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

SUBJECT: Family Guidance Center and Agency Client Records	**Number:**	**80.804**
	Page:	1 of 8

REFERENCE: Organizational Standards for Records of Persons Served; HRS Sec. 622.58 Retention of Medical Records; HAR Sec. 11-175-30.3, Right to a Clinical Record, Access, and Confidentiality; 45 C.F.R. 164.514, 164.526, 164.528, 164.530	**APPROVED:**
	Signature on File July 31, 2003
	Chief Eff. Date

PURPOSE

To establish an accurate, complete, and uniform Family Guidance Center (FGC) and contracted provider agency (Agency) record for each client to:

1. Ensure that the record is safeguarded against loss, destruction, defacement, or unauthorized use.
2. Facilitate information retrieval and use by CAMHD staff or other authorized persons in delivering/coordinating services, or for monitoring purposes.
3. Ensure the maintenance of original documents by the most current CAMHD Branch providing services to the client.

DEFINITION

"*Admitted*" - refers to the agreement between client and CAMHD staff to receive/render continuous mental health services as signified by electronic data entry.

"*Clinical Record*" - the standard client chart that is maintained at the FGC or the Agency that contains entire records of all previous clinical documents filed by service episode in a prescribed format.

"*Closed*" - the client no longer receives services and the client has been discharged or disenrolled as signified through electronic data entry.

"Contracted Provider Agency" - Agency under contract with CAMHD to provide mental health services to CAMHD clients.

"*Informed Consent to Release of Confidential Information*" - a consent form that must: (1) Identify the person who is authorized to disclose the protected health information; (2) Identify the client; (3) Describe the nature of and time span of the protected health information to be disclosed; (4) Identify to whom the protected health information is to be disclosed; (5) Describe the purpose of the disclosure; (6) State that the consent is subject to revocation; and (7) Include the date upon which the consent to disclose ends.

"*Limited Data Set*" - protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household

members of the individual: (1) Names; (2) Postal address information, other than town or city, state, and zip code; (3) Telephone numbers; (4) Fax numbers; (5) Electronic mail addresses; (6) Social security numbers; (7) Medical record numbers; (8) Health plan beneficiary numbers; (9) Account numbers; (10) Certificate/license numbers; (11) Vehicle identifiers and serial numbers, including license plate numbers; (12) Device identifiers and serial numbers; (13) Web Universal Resource Locators (URLs); (14) Internet Protocol (IP) address numbers; (15) Biometric identifiers, including finger and voice prints; and (16) Full face photographic images and any comparable images.

"*Progress Notes*" - documentation related to any type of encounter (i.e. phone, in-person, email) with the client or on behalf of the client and family, including person(s) encountered, date, time, location, purpose, and result.

"*Psychotherapy Notes*" - notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private, group, joint, or family counseling session *that are separated from the rest of the individual's medical record, but do not include*: (1) Medical prescription and monitoring; (2) Counseling session start and stop times; (3) Modalities/frequencies of treatment; (4) Results of clinical tests; or (5) A summary of diagnosis, functional status, treatment plan, symptoms, prognosis, or progress.

"*Registered*" - the assignment of a unique standard electronic identification number which allows services to be tracked and data captured.

"*Service Episode*" - the period during which services are provided which fall between an admission date and subsequent discharge date.

POLICY

1. A client record, uniform throughout CAMHD, shall be developed for every client registered and admitted or registered but not admitted with the CAMHD.
2. All CAMHD Family Guidance Center (FGC) and Contracted Provider Agencies (Agency) shall maintain detailed, comprehensive, and ongoing individual clinical records for each client.
3. All clinical documents, regarding the client, generated by CAMHD Branches shall be part of the client records. All entries shall be typewritten or handwritten in black ink.
4. All records shall be maintained in a protected and confidential manner consistent with State and Federal regulatory mandates.

5. Information received about the client from other agencies is filed in the clinical chart, but is ***not*** considered part of the clinical record when responding to requests by parties external to CAMHD, for copies of the clinical record. Only materials generated by the CAMHD and its contracted provider agencies shall be considered part of a client's record.

6. When a client transfers to another CAMHD Branch or when a Branch makes the request, the clinical record shall be forwarded within five (5) working days from the request/referral date.

7. The client or the client's parent or legal guardian shall not be permitted to alter or remove documents from the clinical record except as provided for in *P&P 80.802, "Disclosure of Clinical Information to the Consumer."*

PROCEDURE

Record-Keeping - FGC Client Records

1. CAMHD must document and retain documentation of the designated record sets that are subject to access by individuals.

2. Clinical records of clients registered and admitted, shall be filed in a uniform 15-inch length, 6-compartment jacket in the following order, from top to bottom, and chronologically with the most recent on top:

   Section 1: Left Leaf ADMISSION/CONSENTS

   Client Contact Log. Note: Branches may substitute (with Division Chief's approval) a form designed specifically to meet the needs of their operations
   Discharge Form
   Registration
   Client Transfer Form
   Diagnostic Assessment Form
   Consent to Treatment Form
   Consent to Receive Psychotropic Medication
   Consent to Obtain/Release Confidential Information Form
   Authorization for Audio or Videotapes, Film, or Photographs
   Other Consent Forms
   Insurance Forms
   SSI Documentation Forms
   Staff Assignment Form
   QUEST Enrollment and Disenrollment Forms
   Client Update Form
   Privacy Notice signed and dated
   Evidence Client/Guardian has been informed of their Rights

Section 2: Right Leaf COURT/AUTHORIZATION/REFERRALS

Court Orders
DHS 1100, Application for Medical Assistance
Request for Service Authorization Form (CAMHD)
DOH Respite Authorization Form
Flex Forms
Requests/Authorizations
Certificate of Need
Flex/Respite Manual Service Authorization Form

Section 3: Left Leaf CORRESPONDENCE/MEDICAL

Outgoing Correspondence on DOH Letterhead
Incoming Correspondence, EXCEPT assessment-related documents, which shall be Filed in Section 4
Legal records EXCEPT court orders, which shall be filed in Section 2
Hospital records, medical records, laboratory test results
Request for Administration/Storage of Medication in School (School Health Services Form)
DHS reports EXCEPT Permanent Plans, which shall be filed in Section 5

Section 4: Right Leaf ASSESSMENTS

Narrative Psychiatric or Psychological Evaluations (CAMHD or outside provider)
Child and Family Information Form
Child and Adolescent Functional Assessment Scale (CAFAS)
Pre-school Child Functional Assessment Scale (PECFAS)
Child and Adolescent Checklist for Ages 4-18 Profile Printout stapled on top
Child Behavior Checklist for Ages 2-3 Profile Printout stapled on top
Teacher's Report Form for Ages 5-18
Profile Printout stapled on top
Youth Self-Report for Ages 11-18 Profile Printout stapled on top
Parent's Questionnaire (Conner's) OPTIONAL
Teacher's Questionnaire (Conner's) OPTIONAL
Photographs, drawings, other raw data

Section 5: Left Leaf TREATMENT PLANS/LOGS

Medication Log (3/96)
Uses and Disclosures/Release of Information Tracking Log (4/03)

Coordinated Service Plans (Annual and Quarterly updates)
Mental Health Treatment Plan (from CAMHD Providers)
DOE I.E.P./504 Plans
DHS Permanent Plan

Section 6: Right Leaf PROGRESS

Discharge Summary Form or narrative discharge summary on yellow progress Note
Yellow Progress Notes

3. Recording of each contact with a client must be relative to the stated objectives in that client's master treatment plan. Entries must be in chronological order, dated, and signed with the staff's full name and title. Progress notes shall be documented within one workday from the date of client contact.
4. The clinical record is a legal document, and as such, the original entries of CAMHD-initiated documents are acceptable. Mechanical reproductions (e.g. photocopies) shall not replace original entries.
5. If it is necessary to leave a blank section at the bottom of the progress notes form, line out the blank sections before starting a new sheet in order to maintain chronology of entries.
6. All entries made by student interns must be co-signed by a professional clinical staff member or the CAMHD Mental Health Care Coordinator whose client the student intern has interacted with.
7. If an error in documentation is made, a single line will be drawn through the incorrect information and initialed by the person making the correction. The correct information is then entered. Erasure, white-out, or blocking out is not permissible.
8. Any requests for amendment of a client's clinical record/designated record set, must be documented in the client's file and must conform to the requirements contained in *P&P 80.802, "Disclosure of Clinical Information to the Client."*

Record-keeping for Agency Client Records

1. Clinical records of clients shall include, but is not limited to, elements outlined in the record-keeping portion of the Treatment Office Tool. **(See Attachment 1)**
2. There shall be one clinical record maintained for each client (Note: Some youths may have several volumes). This record shall be maintained at the primary site where the client is receiving treatment.
3. A designated staff member shall be responsible for the overall security, management, and control of records at each site where records are stored/maintained.

4. When not in use, records containing protected health information shall be filed in locked drawers or cabinets, away from public access.

5. Authorized staff shall not leave unlocked file cabinets with records containing protected health information unattended during the normal workday. All records shall be returned to a designated secure drawer/cabinet at the end of the clinician's workday. Records shall not be physically removed from any facility during non-office/program hours.

   A. If file cabinets are unable to be locked, the office or physical location shall be locked.

   B. If the office or physical location is unable to be locked, the area shall not be left unattended

6. No material containing protected health information shall be located/visible on any bulletin board, wall calendars, wall surfaces, or other areas where unauthorized staff or the public have access to.

7. All personal inboxes/mailboxes to which materials with protected health information get distributed, must be located in a unit where access is controlled in a way where individuals without authorized access to protected health information, can not gain access to the mailboxes/inboxes.

8. All closed records shall be filed in a designated, centralized, "closed records" section in lockable file cabinets or in a secured archive storage space. If records are archived in boxes, all boxes must be sealed and no protected health information shall be located on the outside of the boxes for labeling purposes.

9. Each CAMHD Branch and Central Office shall develop a system for monitoring the location of all records temporarily removed from the designated central file locations.

Access to Records

1. Records shall be accessible to authorized personnel only. Authorized personnel include members of the staff who are providing direct and indirect services to the client, and those persons who are administratively authorized, including CAMHD Performance Management reviewers, regulatory personnel and other State or Federal reviewers for monitoring purposes.*(For CAMHD reviews,* **see Attachment 2***, "Medical Records Standards Tool")*

2. Clients may have access to their records, pursuant to *P&P 80.802, "Disclosure of Clinical Information to the Client."*

Transfer of Records

1. When a client transfers from one CAMHD Branch to another, the clinical record shall be forwarded from the referring Branch and accepted by the receiving Branch prior to the client's first visit and/or within five (5) working days from the referral date.

A. The clinical record shall be personally delivered by designated staff or sent by certified mail with return receipt requested. Receipts signed by receiving persons shall be kept on file by the Branch releasing the record. Each Branch shall develop its own receipt format. Further, Branch clerical staff shall enter onto its client master file card, the date and the Branch to whom the clinical record was sent.

B. Once in its possession, the receiving Branch shall assume responsibility for the client's clinical record.

C. In the event that a Branch requests retrieval of a clinical record for auditing purposes or any other official request allowed by CAMHD P&Ps and applicable state or federal laws, procedures 4A(i)-(ii) shall prevail. The record shall be returned immediately upon completion of the official task. If the record cannot be returned within five (5) working days, the current treating Branch shall be notified.

2. When a client transfers between programs having the same direct administrative control over the programs, an informed consent is not required prior to the release of the client's clinical record. However, the same protections provided for in 4A(i)-(ii) above, shall be applied in this situation as well.

3. When a client transfers from one service setting to another (i.e. from CAMHD to the DOH Developmental Disabilities Division), informed consent of the client is required prior to the release of the client's clinical record and the same protections provided for in 4A(i)-(ii) above, shall be applied in this situation as well.

4. All CAMHD guidelines and statute regarding confidentiality shall be strictly adhered to in the movement and handling of client clinical records.

5. Authorized CAMHD staff at the CAMHD Branches and in Central Office, who release or disclose protected health information about a client pursuant to *P&P 80.407, "Release of Confidential Information About Consumers" or 80.802, "Disclosure of Clinical Information to the Client."* must maintain a log in each client's record, indicating all releases or disclosures occurring within the past six (6) years. However, an accounting is *not* required in the following instances:

   A. To carry out treatment, payment and health care operations;

   B. To individuals of protected health information about them;

   C. Incident to a use or disclosure otherwise permitted or required by CAMHD P&Ps;

   D. Pursuant to an authorization as provided for in *P&P 80.407, "Release of Confidential Information About Consumers;"*

   E. To persons involved in the individual's care or other notification purposes;

F. For national security or intelligence purposes;

G. To correctional institutions or law enforcement officials;

H. As part of a limited data set; or

I. If it occurred prior to April 16, 2003.

ATTACHMENT:

1. Treatment Office Visit Tool

1. Medical Records Standards

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.804.1** Effective Date: March 7, 2003 History: 7/01/01
SUBJECT: Retention of Consumer Records REFERENCE: HRS Section 622-58	Page: 1 of 2 APPROVED: ***Signature on File*** Chief

PURPOSE

To ensure that records of persons no longer served be retained, and destroyed when appropriate, in a safe and appropriate manner.

POLICY

1. All records of person no longer served shall be maintained in a protected and confidential manner for time periods consistent with State and Federal regulatory mandates.
2. When records are to be destroyed after the required maintenance period, such destruction shall be done so as to preserve confidentiality of the information.
3. If records are to be destroyed after only the minimum seven-year retention period, basic information shall be maintained in accordance with State and Federal laws.

STATUTE

Hawaii Revised Statute 622-58: Medical records may be destroyed after the seven-year retention period or after minification, in a manner that will preserve the confidentiality of the information in the record; provided that the health care provider retains basic information from each destroyed record. Basic information ... shall include the patient's name and birth date, a list of dated diagnoses and intrusive treatments and a record of all drugs prescribed or given. The basic information in the case of minors, shall be retained during the period of minority (to age 18) plus twenty-five years after the minor reaches the age of majority.

PROCEDURE

1. The policy concerning record destruction will be standard throughout the Child and Adolescent Mental Health Division (CAMHD). Because of workload issues associated with extracting "basic information" from the record, the standard policy is to retain the original record for the full period of time required by the law.

2. CAMHD policy requires the retention of the clinical record on any client for twenty-five (25) years following the attainment of the age of majority (18); i.e., if the date of last entry is at age 15, the record will be retained for the two (2) and a fraction years to the age of majority plus twenty-five (25) years, for a total of twenty-seven (27) and a fraction years.

ATTACHMENT(S)

A. Hawaii Revised Statute Section 622-58.

B. Deputy Attorney General, Carolee Aoki's letter dated February 19, 1987 to the Director of Health relative to HRS Section 622-58.

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.812** Effective Date: May 7, 2003 History: New
SUBJECT: Use and Disclosure of De-identified Health Information and Limited Data Sets REFERENCE: 45 C.F.R. Parts 164.514(a)-(c) (HIPAA) 34 C.F.R. Part 99 (FERPA)	Page: 1 of 5 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish guidelines for determining when health information is not individually identifiable or for the de-identification of protected health information (PHI) or personally identifiable information (PII).

DEFINITION

See Attachment A - HIPAA Glossary

POLICY

CAMHD shall determine when health information is not individually identifiable or when to de-identify PHI or PII for uses/disclosures other than healthcare purposes in accordance with the HIPAA regulations at 45 C.F.R. Part 164.514 (a)-(c) and FERPA regulations at 34 C.F.R. Part 99. CAMHD shall also determine when it is necessary to re-identify previously de-identified PHI or PII. To adequately de-identify PHI or PII, and to ensure proper re-identification, CAMHD must comply with the terms of this policy.

PROCEDURE

A. De-Identification: Health information that has been stripped of all identifiers in accordance with HIPAA standards is not considered to be PHI and/or PII, is not subject to HIPAA and may be used or disclosed without the authorization of the consumer/client's parent or legal guardian. There are two methods by which PHI and or PII may be determined to be de-identified:

1. Method One - This method shall be used for research purposes. CAMHD shall submit the health information to the Department of Health Institutional Review Board where a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable, will apply these principles to the

information at hand and determine, and document, that the risk is very small that the information could be used alone, or in combination with other reasonably available information to identify the consumer/client.

2. Method Two - Under the second method of de-identification, CAMHD shall determine that the health information is not individually identifiable by using the "safe harbor" method whereby CAMHD de-identifies the consumer/client records containing PHI and/or PII by removing the following identifiers of the consumer/client or his/her relatives or household members:

   - names;
   - all elements of a street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code for areas that contain over 20,000 people;
   - all elements of dates (except year) for dates directly related to the individual, (***e.g.***, birth date, admission/discharge dates, date of death);
   - telephone numbers;
   - fax numbers;
   - e-mail addresses;
   - social security numbers;
   - medical record numbers;
   - health plan beneficiary numbers;
   - account numbers;
   - certificate/license numbers;
   - license plate numbers, vehicle identifiers and serial numbers;
   - device identifiers and serial numbers;
   - URL addresses;
   - Internet Protocol (IP) address numbers;
   - biometric identifiers, including finger and voice prints;
   - full face photographic images and comparable images;
   - any other unique identifying number except as created by CAMHD to re-identify the information

With regard to disclosing a student's information from their educational record, CAMHD will follow the process specified in the "safe harbor" method. Additionally other information that would make the student's identity easily traceable (***e.g.***, the school district, school attended, grade level, etc.)," considered FERPA applicable identifiers, shall be removed.

B. CAMHD may use/disclose PHI and/or PII that has been de-identified for any purpose as long as no means of re-identification is provided.

1. CAMHD is not required to provide an accounting of any use or disclosure of de-identified health information.

2. CAMHD may use PHI and/or PII to create de-identified information or may disclose PHI and/or PII to a business associate for the purpose of creating de-identified information, whether or not the de-identified information is to be used by CAMHD.

C. Use of a Limited Data Set: CAMHD may use or disclose PHI and/or PII in a limited data set for research purposes, healthcare operations, or public health purposes. Specifically, the health information that is used or disclosed must not contain any of the following identifiers for the consumer/client, and/or his/her relatives, or household members:

- Names
- Postal address information, other than town or city, state and zip code
- Telephone numbers
- Fax numbers
- Email addresses
- Social Security numbers
- Medical record numbers.
- Health plan beneficiary numbers
- Account numbers
- Certificate/license numbers
- Vehicle identifiers and serial numbers, including license plate numbers
- Device identifiers and serial numbers

- URLs
- IP addresses
- Biometric identifiers including finger and voice prints
- Full face photographic images and any comparable images.

De-Identified Information vs. Limited Data Set PHI:

The only differences between fully de-identified information and information obtained pursuant to a limited data set agreement, is that the information obtained pursuant to the limited data set agreement may contain the following elements, which may not be included in fully de-identified information: town/city, state and zip code information; date information; and unique identifying number, characteristic or code information.

D. CAMHD may use/disclose health information in a limited data set for health care operations, research, or public health purposes if it enters into a Data Use Agreement with the recipient of the data.

1. Should CAMHD become aware of a pattern of activity or practice of the limited data set recipient that constitutes a material breach or violation of the agreement, CAMHD will take reasonable steps to cure the breach or end the violation.

2. If such steps are unsuccessful, CAMHD will:

   - Discontinue disclosure of the health information to the recipient; and
   - Report the problem to the Secretary of Department of Health and Human Services.

E. Re-identification of de-identified or limited data set health information

1. CAMHD may assign a code or other means of record identification to allow information that is de-identified in accordance with its policy to be re-identified by CAMHD, provided that:

   - The code or other means of record identification is not derived from or related to information about the consumer/client;
   - The code is not otherwise capable of being translated so as to identify the consumer/client;

- CAMHD does not use or disclose the code or other means of core identification for any other purpose;
- CAMHD safeguards the code or other means of record identification, treating it as protected health information; and
- CAMHD does not disclose the mechanism for re-identification that could be used to link the code to the consumer/client.

2. If de-identified information is re-identified, CAMHD may use or disclose such re-identified information only as permitted or required by policies of CAMHD that govern the use and disclosure of protected health information.

ATTACHMENT(S):

Attachment A – HIPAA Glossary

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL	**Number: 80.813**
CAMHD Administration	Effective Date: March 20, 2003 History: New
SUBJECT: Notice of Privacy Practice	Page: 1 of 9
REFERENCE: 45 C.F.R. §164.520, 164.504(a), 164.508(b)(5), 164.522(a)-(b), 164.530(i)(2)(ii); 34 C.F.R. Part 99 (FERPA); HRS §622-58 Retention of Medical Records	APPROVED: Chief

PURPOSE

To define the requirements of, and the implementation of, the Child and Adolescent Mental Health Division's (CAMHD) Notice of Privacy Practice ("Notice").

DEFINITION

Authorizations – Point-in-time authorizations required for uses and disclosures of protected health information not otherwise permitted by this P&P or any other CAMHD requirements for the use or disclosure of protected health information (PHI).

Informed Consent to Release of Confidential Information –a consent form that must: (1) Identify the person who is authorized to disclose the protected health information; (2) Identify the client; (3) Describe the nature of and time span of the protected health information to be disclosed; (4) Identify to whom the protected health information is to be disclosed; (5) Describe the purpose of the disclosure; (6) State that the consent is subject to revocation; and (7) Include the date upon which the consent to disclose ends.

HHS –U.S. Department of Health and Human Services.

Individually identifiable health information – information that is a subset of protected health information, including demographic information collected from an individual, and:

1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
    (a) That identifies the individual; or

2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

   (a) That identifies the individual; or

   (b) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Protected Health Information –individually identifiable health information that is transmitted by electronic media or maintained in electronic form/medium. Protected health information excludes individually identifiable health information in: (1) Education records covered by the Family Educational Rights and Privacy Act (FERPA) as amended by 20 U.S.C. 1232g; (2) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (3) Employment records held by a covered entity in its role as employer.

Personally Identifiable Information –information found in educational records that includes, but is not limited to: 1) the student's name; 2) the name of the student's parent or other family member; 3) the address of the student or student's family; 4) a personal identifier, such as the student's social security number or student number; 5) a list of personal characteristics that would make the student's identity easily traceable; or 6) other information that would make the student's identity easily traceable.

Education Records –those records that are: 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution.

Parent –a parent of a student or consumer and includes a natural parent, or legal guardian.

Eligible Student - a student who has reached 18 years of age or is attending an institution of postsecondary education.

HIPAA Disclosure – the release, transfer, grant of access to, or divulging in any other manner of PHI to a person or entity outside of the entity that possesses the PHI.

FERPA Disclosure – to permit access to or the release, transfer, or other communication of personally identifiable information continued in education records to any party, by any means, including, but not limited to, oral, written, or electronic means.

POLICY

Through a single Notice, CAMHD will inform the parent or legal guardian of each consumer of their privacy rights under HIPAA and FERPA, and how their protected health information or personally identifiable information may be used. The Notice will separate and identify the privacy rights as it applies to the two federal statutes.

CAMHD will post a copy of the Notice in a clear and prominent location at the Central Office and each Family Guidance Center (FGC), and provide the parent of each consumer with a copy of its Notice (1) upon first enrollment with the division; (2) to current participants in CAMHD services; and (3) provide the consumer with a revised Notice, whenever material revisions are necessary.

For FERPA compliance, and applicable only to consumers who fall exclusively under FERPA or HIPAA/FERPA jurisdiction, the Notice will inform the parent or eligible student that they have the right to:

1. Inspect and review the student's education records;
2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights (see P&P 80.603.1, "Individual Right to File Complaints About Privacy Policies and Procedures or Compliance with Policies and Procedures");
3. Consent to disclosures of personally identifiable information (PII) contained in the student's education records, except to the extent that the Act authorize disclosure without consent;
4. File with the U.S. Department of Education a complaint concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part (*see* P&P 80.603.1); and
5. Obtain the address of the Secretary of the U.S. Department of Education.

PROCEDURE

A. Effective April 14, 2003, CAMHD will provide each individual with a Notice:

1. Prior to or on the date of first service delivery;
2. As soon as reasonable and practical after an emergency treatment situation;
3. Automatically and contemporaneously, in an electronic format, if CAMHD delivers its first service to the individual electronically.

B. CAMHD must provide notice:

1. No later than the compliance date for CAMHD, to individuals then covered by CAMHD;
2. Thereafter, at the time of enrollment, to individuals who are new enrollees;
3. Within sixty (60) days of a material revision to the notice, to individuals then covered by CAMHD; and
4. No less frequently than once every three years, CAMHD must notify individuals then covered by the CAMHD of the availability of the notice and how to obtain the notice.

C. CAMHD will ask the parent or legal guardian of the consumer to acknowledge in writing that he/she has received the Notice.

D. CAMHD will post the Notice in a clear and prominent location within the Central Office's reception area and at each Family Guidance Center (FGC), so that parent or legal guardian seeking service from CAMHD will be able to read the Notice. CAMHD will also have the Notice available at the Central Office and FGC for parents or legal guardians who would like to take a copy with them.

E. The Notice will include the following elements:

1. The header statement, "THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."
2. A description and at least one example of uses and disclosures related to treatment, payment and health care operations.
3. Other uses or disclosures that CAMHD is permitted or required to make without the parent's authorization.
4. A statement that other uses and disclosures will be made only with the parent's written authorization and that the parent may revoke such authorization.
5. If applicable, a statement that CAMHD may contact the parent to provide appointment reminders, information about treatment alternatives or other health-related services, e.g., treatment team meetings, CSP meetings, etc.
6. A statement and brief description of the parent's rights to:
   (a) Request restrictions on certain uses and disclosures, accompanied by a statement that CAMHD is not required to agree to a requested restriction;
   (b) Receive confidential communications;

(c) Inspect and copy protected health information;

(d) Amend protected health information;

(e) Receive an accounting of disclosures; and

(f) Obtain a paper copy of the Notice from CAMHD upon request, even if the parent has agreed to receive the Notice electronically.

7. A statement that CAMHD:

(a) Is required by law to maintain the privacy of protected health information and to provide parents with the Notice;

(b) Is required to abide by the terms of the Notice currently in effect; and

(c) If applicable, reserves the right to change the terms of its Notice and to make provisions of the new Notice effective for all protected health information it maintains. CAMHD will also describe how it will provide parents with a revised Notice.

8. A statement and brief description of the parent's right to complain, without fear of retaliation, to CAMHD and to the Secretary of Health and Human Services if he/she believes his/her child's privacy rights have been violated.

9. The name, title and telephone number of a person or office to contact for further information.

10. The effective date of the Notice.

11. If applicable, a description of more limited uses and disclosures observed by CAMHD.

F. Under a separate heading for FERPA, the Notice must include all of the following:

If your child's records are considered "educational records," CAMHD will only disclose information contained in your child's education records pursuant to FERPA requirements. Your child's FERPA notice is provided to you by the Department of Education and is hereby referenced in this Notice.

Note:

The following FERPA-related information is for reference purposes in CAMHD's notice and is only mentioned in this P&P as it pertains to procedure relating to FERPA issues. This information may, or may not, be incorporated in the Department of Education's notice. Aside from the abovementioned statement, these elements are not contained in the CAMHD notice.

1. The procedure for exercising the right to inspect and review education records.

2. Consent to release PII is not required when:

   (a) The disclosure is to other school officials, including teachers, within the agency or institution, whom the agency or institution has determined to have legitimate educational interests;

   (b) The disclosure is to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, where:

      (i) A reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless (1) the disclosure is initiated by the parent or eligible student; or (2) the annual notification of the agency or institution includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll.

      (ii) It gives the parent or eligible student, upon request, a copy of the record that was disclosed; and

      (iii) It gives the parent or eligible student, upon request, an opportunity for a hearing.

   (c) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if (1) the student is enrolled in or receives services from the other agency or institution; and (2) he disclosure meets the requirements of paragraph (a) of this section.

   (d) The disclosure is to authorized representatives in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs. These authorized representatives are:

      (i) The Comptroller General of the United States;

      (ii) The Attorney General of the United States;

      (iii) The Secretary; or

      (iv) State and local educational authorities.

      The information collected must: (1) be protected in a manner that does not permit personal identification of individuals by anyone except the officials

referred to in this section; and (2) be destroyed when no longer needed for the purposes listed in this section.

However, (1) and (2) of this section does not apply if: (1) the parent or eligible student has given written consent for the disclosure; or (2) the collection of personally identifiable information is specifically authorized by Federal law.

(e) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(i) Determine eligibility for the aid;

(ii) Determine the amount of the aid;

(iii) Determine the conditions for the aid; or

(iv) Enforce the terms and conditions of the aid. As used in paragraph (e) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(f) The disclosure is to State and local officials or authorities to whom this information is specifically:

(i) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(ii) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, if reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records. The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

(g) Paragraph (f) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(h) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(i) Develop, validate, or administer predictive tests;

(ii) Administer student aid programs; or

(iii) Improve instruction.

(i) The agency or institution may disclose information under paragraph (h) of this section only if: (1) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and (2) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(j) If the Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (h) violates paragraph (i)(2) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(k) For the purposes of paragraph (h) of this section, the term "organization" includes, but is not limited to, Federal, State and local agencies, and independent organizations.

(l) The disclosure is to accrediting organizations to carry out their accrediting functions.

(m) The disclosure is to parents of a dependant student, as defined in section 152 of the Internal Revenue Code of 1968.

(n) The disclosure is to comply with a judicial order or lawfully issued subpoena. See P&P 80.404 "Release of Clinical Information Pursuant to a Subpoena and Subpoena Duces Tecum."

3. The procedure for requesting amendment of records, pursuant to P&P 80.603.1, when:

(a) A parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing.

4. If the educational agency or institution has a policy of disclosing education records to other school officials --including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests-- a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

5. If there is a material change to CAMHD's privacy practices, CAMHD will promptly revise and distribute (within 60 days) its Notice to individuals currently participating, as described in sections A, C and D above. Changes to terms of the Notice will be implemented on or after the effective date of the Notice, except when otherwise required by law.

6. CAMHD will prominently post the Notice on its web site.

7. CAMHD may e-mail the Notice to an individual. If CAMHD knows that an e-mail transmission has failed, CAMHD will provide a paper copy of the Notice to the individual. In addition, upon request, CAMHD will provide a paper copy of the Notice to any individual who receives the Notice electronically.

8. CAMHD will retain copies of its Notices for six (6) years. CAMHD will also retain individuals' written acknowledgement of receipt of the Notice and documentation of good faith efforts to obtain such written acknowledgements for seven years. In the case of minors, written acknowledgement of the Notice shall be retained during the period of minority plus seven years after the minor reaches the age of majority.

9. CAMHD may issue a joint Notice, which:

(a) Describes the covered entities to which the Notice applies.

(b) Describes the service delivery sites to which the Notice applies.

(c) States that the covered entities (provider) participating in the organized health care arrangement will share protected health information with each other as necessary to carry out the treatment, payment or health care operations functions of the organized health care arrangement

10. CAMHD will provide the Notice to individuals as described in sections A, B and C above, and material revisions to the Notice as described F. Provision of the joint

Notice to an individual by any one of the covered entities will satisfy the provision requirement for all other participating covered entities.

ATTACHMENT:

1. Notice of Privacy Practice

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.814** Effective Date: April 11, 2003 History: New
SUBJECT: Use and Disclosure of Protected Health Information and Personally Identifiable Information for Research Purposes REFERENCE: 45 CFR Parts 160 and 164 (HIPAA); 34 CFR §99.31(6)(i) (FERPA)	Page: 1 of 5 APPROVED: ***Signature on File*** Chief

PURPOSE

To provide guidance for the use and disclosure of protected health information (PHI) and personally identifiable information (PII) for research purposes in accordance with applicable federal and state laws.

DEFINITION

See Attachment A - HIPAA Glossary

POLICY

The CAMHD must obtain approval from its Department of Health Institutional Review Board (IRB) for the use and disclosure of PHI and PII for research purposes in accordance with the HIPAA Privacy Act and the Family Educational Right and Privacy Act (FERPA). For research authorizations CAMHD will follow the Health and Human Services (HHS) research guidelines. (See Attachment B)

Research Use and Disclosure with Authorization

A. CAMHD must obtain a valid authorization from the parent/legal guardian of the consumer for the use and disclosure of PHI and/or PII for research that **includes treatment** of the consumer. The authorization shall contain the following:

1. Specific PHI and/or PII necessary to the research;
2. The reasons why such information is needed;
3. How such information will be used or disclosed to carry out treatment, payment or health care operations;
4. List of any PHI and/or PII the parent/legal guardian does not agree to authorize or restricts the use of the disclosure;
5. List of PHI and/or PII that CAMHD has the right to use and disclose as required by law or permitted in order to prevent or lessen serious and imminent threats to health and safety without the authorization of the parent/legal guardian;

6. Identification of users by name or class of persons authorized to use and disclose the information;
7. Expiration date or circumstances under which use and disclosure are nullified;
8. Rights of consumer:
    a. To inspect or copy the PHI and/or PII to be used/disclosed, but that right of access may be temporarily suspended for as long as the research is in progress and will be reinstated upon completion of the research;
    b. To refuse to sign the authorization; and
    c. To revoke the authorization in writing.
9. Resulting remuneration to CAMHD of use/disclosure if applicable;
10. Situations in which authorized information use/disclosure may be re-disclosed if no longer protected by 45 CFR, Part 164, Subpart E (Standards for Privacy of Individually Identifiable Information) or 34 CFR Part 99 (Family Educational Rights Privacy Act);
11. Statements that attest to parental receipt of the CAMHD "Notice of Privacy Practice," and the binding nature upon both parties of statements made following authorizations;
12. Signature of consumer's parent/legal guardian, or third party representative, along with the date; and
13. If signed by a third party representative of the consumer, a description of such representative's authority to act for consumer.

Research Use and Disclosure without Authorization

A. To use and disclose PHI and/or PII for research that **does not include treatment** of the consumer, regardless of the source of funding of the research, without written consent or authorization of the parent/legal guardian or the opportunity for parent/legal guardian to agree or object, the CAMHD must obtain one of the following:

1. Documentation that an alteration to or waiver, in whole or in part, of the authorization for use and disclosure of PHI and/or PII has been approved by its Department of Health Institutional Review Board and that the use/disclosure satisfies the following criteria:
    a. Involves no more than minimal risk to the consumers;
    b. Privacy rights and welfare of the consumers will not be adversely affected;

c. The research could not practicably be conducted without the alteration or waiver;

d. The research could not practicably be conducted without access to and use of the PHI and/or PII;

e. The privacy risks to consumers whose PHI and/or PII is to be used/disclosed are reasonable in relation to any anticipated benefits to the consumers, and the importance of the knowledge that may reasonably be expected to result from the research;

f. There is an adequate plan to protect the identifiers from improper use and disclosure;

g. There is an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless health or research justification or legal requirements call for retaining the identifiers; and

h. There are adequate written assurances that the PHI and/or PII will not be re-used or re-disclosed to any other person or entity, except as required by law, for authorized oversight of the research project, or for other research for which the use and disclosure of PHI and/or PII would be permitted by 45 CFR Parts 160 and 164 or 34 CFR Part 99.

2. **Review and Approval Procedures** – The IRB shall follow the requirements of the Common Rule, including the normal review procedures or the expedited review procedures.

3. **Documentation of Waiver Approval** – Documentation must include all of the following:

a. Identification and date of action – A statement identifying the IRB and the date on which the alteration or waiver of authorization was approved;

b. Waiver criteria – A statement that the IRB has determined that alteration or waiver, in whole or in part, of authorization satisfied the waiver criteria;

c. PHI and/or PII needed – A brief description of the PHI and/or PII for which use or access has been determined to be the minimum necessary by the IRB;

d. Review and approval procedures – A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures; and

e. Required signature – The document must be signed by the chair or other member, as designated by the chair, of the IRB.

Reviews Prior to Research

A. CAMHD may allow PHI and/or PII to be reviewed in preparation for research if the researcher represents, either in writing or orally, that:

1. The use/disclosure is sought solely to review PHI and/or PII as necessary to prepare a research protocol or for similar purposes preparatory to research;
2. No PHI and/or PII is to be removed from the CAMHD by the researcher in the course of the review; and
3. The PHI and/or PII for which use or access is sought is necessary for the research purpose.

Research Involving Decedent's PHI and/or PII

A. CAMHD may use and disclose **PHI and/or PII** if the researcher represents that:

1. The use/disclosure that is sought is solely for research on the **PHI and/or PII** of decedents; and
2. The **PHI and/or PII** for which use/disclosure is sought is necessary for the research purpose.

CAMHD may require the researcher to provide a copy of the death certificate of the decedent.

Research Use and Disclosure Using De-identified PHI and/or PII

A. To use and disclose information that has been "de-identified" of all individually identifiable health information that are not necessary to the research, CAMHD must:

1. Meet requirements for de-identification in accordance with policy and procedure 80.812, "Use and Disclosures of De-identified Health Information and Limited Data Sets"; and
2. Submit to the IRB, upon request, all manuscripts, abstracts or other publicly-released information related to the research prior to public release or publication.

B. CAMHD may assign a code or other means of record identification to allow information that is de-identified to be re-identified provided that requirements for re-identification have been met in accordance with policy and procedure 80.812, and such re-identified information is used/disclosed only as permitted or required by administrative policies

governing the use/disclosure of PHI and/or PII and in accordance with state and federal laws.

Research Pursuant to the Family Educational Rights and Privacy Act (FERPA)

Consent is not required to disclose information under FERPA where:

1. The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:
   a. Develop, validate, or administer predictive tests; or
   b. Improve instruction.
2. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and the information is destroyed when no longer needed for the purposes for which the study was conducted.

ATTACHMENT(S):

A. HIPAA Glossary

B. Health and Human Services Research Guidelines

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.815** Effective Date: April 14, 2003 History: New
SUBJECT: Verification of Requestor Prior to Disclosure of Protected Health Information and Personally Identifiable Information. REFERENCE: 45 C.F.R. Parts 160 and 164 (HIPAA); 34 C.F.R. Part 99 (FERPA)	Page: 1 of 5 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish uniformity in verifying the identity and authority of people or entities who request disclosure of either protected health information (PHI) pursuant to 45 CFR Parts 160 and 164 (HIPAA), or personally identifiable information (PII) pursuant to 34 CFR Part 99 (FERPA).

DEFINITION

"Eligible Student"- a student who has reached 18 years of age or is not attending an institution of postsecondary education.

See Attachment A - HIPAA Glossary

POLICY

Prior to disclosure, CAMHD staff shall verify the identity of any person requesting protected health information (PHI) or personally identifiable information (PII) and the authority of any such person to have access to the requested PHI or PII, if the identity or such authority is not known to CAMHD staff. In all cases, any disclosure will be made in accordance with the CAMHD policy and procedure for the "Release and Access to Confidential Information about Consumers" (P&P 80.407) and in accordance with state and federal laws.

General rule of reasonableness: the Health Insurance Portability and Accounting Act (HIPAA) privacy rules specify that verification policies and procedures are to be applied reasonably. "Reasonable" application includes using common sense; being alert for telltale inconsistencies in a person's request for access to PHI; using common health care industry practices; paying attention to details when questioning people and examining credentials or documents they present; and, in the event of any doubt, checking with supervisors or others (such as legal counsel) before disclosing PHI. FERPA does not prescribe any formal procedure to verify identification of requestors' of PII. CAMHD will, therefore, follow the HIPAA procedure to verify the requestor's identification.

Good faith belief in a person's identity (and, for public officials, their authority) after careful checking (using the outline below) is an essential element of reasonableness.

Actual knowledge of falsity or of an inconsistency in a person's identity or authority makes it unreasonable to disclose PHI or PII to that person.

Certain circumstances listed require the exercise of ***professional judgment*** before a disclosure of PHI or PII is proper. Professional judgment includes using the professional's experience and common practice to make reasonable inferences about the consumer/client's best interests. Professional judgment is the province of a qualified mental health professional (QMHP), administrator or attorney.

PROCEDURE

A. The parent/legal guardian or personal representative of the consumer/client must sign a valid authorization for the use/disclosure of confidential PHI or PII before such information can be released to others, except in accordance with existing HIPAA requirements and state and federal laws.

B. All requests for disclosure shall be forwarded to and approved by the CAMHD Privacy Coordinator or Family Guidance Center(FGC) designee and must include the following:

1. The name of the requesting party or parties;

2. Specific PHI or PII to be disclosed;

3. Purpose of the disclosure; and

4. Any documentation, statements or representations, whether oral or written, from the person requesting the PHI or PII of his/her authority to request such information (i.e., legal representative of consumer, law enforcement official, etc.)

C. CAMHD staff shall verify the identity and authorization of any person or entity/organization requesting PHI and/or PII prior to the release of PHI and/or PII by using the following procedure as applicable:

1. Request made by a parent, legal guardian, or other personal representative in person on behalf of a minor:

a. When CAMHD staff knows the identity of the parents, legal guardians, or other personal representative, no additional verification of identity is required.

b. In cases where the CAMHD staff does not know the identity of the parent, legal guardian, or other personal representative, CAMHD staff shall verify that the person requesting the PHI and/or PII has the authority to act by providing a copy of birth certificate, a court order, or other competent evidence of the relationship or authority, e.g., health care power of attorney, in addition to verifying his/her own identity with photo identification.

2. Request made by law enforcement and other public officials in person:

a. CAMHD staff may rely, if such reliance is reasonable under the circumstances, on any of the following: verification of his/her identity by producing law enforcement identification, governmental identification or other identification that shows that the official has the authority to accept the PHI and/or PII on behalf of the law enforcement or government agency; and

b. The law enforcement or public official must also produce a written statement of legal authority or court order under which the information is requested, or if, a written statement would be impractical, an oral statement of such legal authority. A request made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal is presumed to constitute legal authority.

c. In emergency situations where time is critical and the total circumstances make it reasonable to infer the identity of a law enforcement official or other government official, an agency identification, official credentials or proof of government status is sufficient for verification of identity.

3. Request made by other third party seeking disclosure based on documents:

a. Request made by disaster relief agencies:

i) In emergencies, CAMHD staff shall consider the totality of the circumstances using reasonableness.

ii) In non-emergencies, CAMHD Privacy Coordinator shall consult with CAMHD’s counsel or a designated administrator.

b. Request made by mail:

i) If the consumer/client's parent/legal guardian or personal representative requests PHI and/or PII be sent to him/herself, CAMHD shall verify that the name, address, particular information, and signature on the request are the same as those in the consumer/client's file. The request must be either notarized or contain a certification by the parent/legal guardian or personal representative that he/she is the individual he/she claims to be.

ii) If the parent/legal guardian or personal representative request PHI and/or PII to be sent to a third party and includes a valid, signed authorization form, CAMHD staff shall verify that the name, address, particular information, and signature on the request is the same as those in the consumer/client file.

iii) If another individual (including law enforcement, attorneys, insurance company representatives) requests PHI and/or PII, the requestor must include documentation of authority (***e.g.***, law enforcement requests must be on letterhead, requests by attorneys must include a completed authorization signed by parent/legal guardian or personal representative). CAMHD staff shall verify the requestor's identity in accordance with procedure C.2.a.-b. of this policy.

4. Requests by subpoena/court order:

CAMHD staff shall process the request in accordance with policy and procedure 80.404, "Release of Clinical Information Pursuant to a Subpoena or Subpoena Duces Tecum", for responding to requests for PHI and/or PII by subpoena/court order.

D. All requests for disclosure for PHII and/or PII, including all documents of verification and authorization shall be tracked and placed in the consumer/client's file.

E. General rules for examining documents used to verify identity or authority:

1. Legal documents issued by a court, such as a court order, search warrant, arrest warrant, subpoena or similar document bearing the signature of a judge, magistrate, or other judicial officer. Unless the circumstances suggest the document is a forgery or has been tampered with, a document of this type can be

taken at face value based on what it says (that is, a document of this type is self-authenticating).

2. Legal documents not issued by a court and not signed by a judge, magistrate, or other judicial officer. This may include some subpoenas or litigation demands for production of documents, records, or other things. These documents require examination by CAMHD legal counsel before they can be taken at face value (that is, a document of this type is not necessarily self-authenticating). For example, CAMHD may have the right to object in court to the demands in such a document. For further instructions on proper procedural response when served with a subpoena or subpoena duces tecum, see P&P 80.404.

3. Letters issued by a government agency for identification or to state authority must be on the appropriate agency letterhead, dated, and signed.

4. Letters issued by non-governmental sources for identification or to state authority should be referred to CAMHD counsel or a designated administrator for further verification.

ATTACHMENT:

A - HIPAA Glossary

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL	**Number: 80.816**
CAMHD Administration	Effective Date: May 22, 2003 History: New
SUBJECT: Disclosure of Protected Health Information and/or Personally Identifiable Information for Law Enforcement Purposes REFERENCE: 45 CFR §164.502(j)(2), 164.512(f), 512(k)(5); 34 CFR Part 99 (FERPA)	Page: 1 of 4 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish guidelines defining conditions under which CAMHD may disclose protected health information (PHI) and/or personally identifiable information (PII), without client authorization or consent, to law enforcement officials.

DEFINITION

"Law enforcement official" – An official or employee under federal or state authority and its territories or political subdivisions, empowered by law to:

a. Investigate or conduct an official inquiry into a potential violation of law; or

b. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law pursuant to 45 CFR §164.501.

See Attachment A - HIPAA Glossary

POLICY

CAMHD may disclose protected health information (PHI) to law enforcement officials as required by federal, state, or county laws to the extent that the disclosure complies with and is limited to the relevant requirements of the law.

Pursuant to 34 CFR §99.31(10) (FERPA), CAMHD may, without consent, disclose PII from a primary or secondary educational record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. However, where the purpose is to identify a perpetrator suspected of a criminal offense, disclosure of PII may not be disclosed without first consulting the Department of the Attorney General.

For FERPA records, CAMHD shall maintain a record of each request for access to each disclosure that identifies the requesting and receiving parties and their legitimate interests.

Relative to limitations applicable to re-disclosure of information, the record must identify the names of the additional parties to which the receiving party may disclose the information, and the legitimate interests of each.

PROCEDURE

A. **Decedents** – CAMHD shall disclose PHI and/or PII to alert law enforcement about the death of an individual under suspicious circumstances where the individual as been in protective custody or under supervised care.

CAMHD staff may call 911, ask for police dispatch, provide the following information, and document the name of the person to whom information was provided, date and time of notification, and description of information disclosed:

1. Name of injured person,
2. Nature, type and extent of the injury,
3. Mechanism of injury, and
4. Location and time of incident, if known.

Follow police instructions regarding the preservation of evidence

B. **Abuse or Neglect of Children** - PHI and/or PII disclosure shall be directed by CAMHD's Policy 80.805, "Sentinel Event/Incidents".

C. **Law Enforcement Custodial situations** – PHI and/or PII about an individual may be disclosed to a law enforcement official only if the client is in lawful custody, upon written request for release of PHI and/or PII, and if the law enforcement official represents that the information is necessary for the health care to the individual, or the health and safety of personnel that transport, escort, or staff the institution.

D. **Identification and Location Purposes** – PHI (*not personally identifiable information)* may be disclosed to a law enforcement official's request for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person. Except for disclosures required by law as outlined in Sections A and B, information disclosed shall be *limited* to only the following upon consultation with the Attorney General's Office:

1. Name and address;
2. Date and place of birth;
3. Social security number;
4. Date, time, treatment type and mental status; and

5. Description of distinguishing physical characteristics (including height, weight. Gender, race, hair and eye color, presence or absence of facial hair (beard or mustache), scars, and tattoos).

E. **Victims of a crime** (*other than mandated injury reports*) – PHI or PII may be disclosed to a law enforcement official upon written request for release of PHI and/or PII, about an individual who is or is suspected to be a victim of a crime on the condition that:

1. The parent/legal guardian or personal representative of the consumer/client agrees to the disclosure;

2. The law enforcement official represents that the information will not be used against the consumer/client, and undue delay will adversely affect the investigation, and

3. The disclosure is in the best interest of the consumer/client as determined by CAMHD in the exercise of its professional judgment.

F. **Workforce Members who are Victims of Crime** – A workforce member who is a victim of a criminal act may release PHI and/or PII about a client who is the suspected perpetrator of the criminal act that is limited to identification and location information listed in section D to a law enforcement official. The workforce member shall notify the CAMHD Security Officer.

G. **Crime on Premises** – PHI and/or PII may be disclosed to a law enforcement official if CAMHD, in good faith, believes the information constitutes evidence of criminal conduct that occurred on its premises. Contact the CAMHD Security Officer, who will contact law enforcement as necessary.

H. **Reporting Crime in Emergencies off CAMHD's Premises** – The following PHI and/or PII may be disclosed to a law enforcement official of criminal activity information gained while on official work status off CAMHD's premises:

1. The commission and nature of a crime;

2. The location of such crime or of the victim(s) of such crime; and

3. The identity, description, and location of the perpetrator of such crime.

If the CAMHD believes that the emergency is the result of abuse, neglect, or domestic violence, disclosure is subject to the policy on disclosures about victims of abuse or neglect (Policy 80.405, "Mandatory Reporting of Child Abuse or Neglect").

I. **Avert serious Threat to Health or Safety** – Disclosure of PHI and/or PII to avert a serious threat to the health and safety of a person or the public or for alerting law

enforcement to identify or apprehend an individual who poses such a threat shall be directed pursuant to 45 CFR §164.512(j).

J. Judicial and Administrative Proceedings -PHI or PII (other than Specially Protected Information) may be disclosed to a law enforcement official in response to a valid court order, warrant, subpoena, or summons. Such disclosures shall be directed by Policy 80.404, "Release of Clinical Information Pursuant to a Subpoena and Subpoena Duces Tecum."

K. Specialized Government Functions Related to Law Enforcement – PHI may be disclosed to a law enforcement official's request related to national security and intelligence activities

ATTACHMENT(S):

A. HIPAA Glossary

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.817** Effective Date: April 11, 2003 History: New
SUBJECT: Mitigation in Case of Violation REFERENCE: 45 CFR Parts 160 and 164 (HIPAA); 34 CFR Part 99 (FERPA)	Page: 1 of 2 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish a protocol whereby Child Adolescent Mental Health Division (CAMHD) may address and cease the unauthorized or accidental use and disclosure of protected health information (PHI) and/or personally identifiable information (PII) by its staff or business associates.

DEFINITION

*"**Mitigation**"* – The alleviation, reduction, abatement or diminution of an injury caused by a negligent, careless or willful act.

*"**Breach**"* – The breaking or violating of a law, engagement, or duty, either by commission or omission.

See Attachment A for further definitions: HIPAA Glossary

POLICY

At a minimum, CAMHD shall make diligent efforts to ensure that the PHI and/or PII, that was disclosed in an authorized manner, is destroyed.

A. CAMHD must mitigate, to the extent practicable, any harmful effects of unauthorized uses and disclosures of PHI and/or PII by CAMHD staff or business associates.

B. Should CAMHD discover any unauthorized use or disclosure of PHI and/or PII by its business associates, CAMHD shall hold the business associate responsible for mitigating any such breach. If the business associate fails to mitigate the breach or amend its practice(s), which are the causes of the breach, CAMHD may, to the extent feasible:

1. Terminate its contract with the business associate; or

2. If not feasible, report the problem to the Secretary of Department of Health and Human Services. See P&P 80.215, "Disclosures to Business Associates."

PROCEDURE

At a minimum CAMHD shall make diligent efforts to ensure that the PHI and/or PII that was disclosed in an unauthorized manner is destroyed.

A. Should the unauthorized disclosure occur in written, faxed or electronic form, CAMHD will appropriately inform the individual(s) receiving it that the disclosure was not authorized, must be destroyed or deleted and that the re-disclosure of the PHI and/or PII is not permitted. If the individual(s) has further disclosed to others, he/she will be requested to notify those individuals that the PHI and/or PII was not authorized must be destroyed and that re-disclosure is not permitted.

B. Should the unauthorized disclosure of PHI and/or PII occur orally, the office, program or facility shall inform the individual(s) receiving the PHI and/or PII that the use/disclosure was not authorized and that he/she may not re-disclose the PHI and/or PII to others.

C. CAMHD shall make an assessment of the potential harmful effects of the unauthorized use or disclosure and define appropriate mitigation actions that may include notification of the affected individual of the unauthorized PHI and/or PII disclosure if, in the professional judgment of the staff, such action is warranted.

D. CAMHD shall provide appropriate notification to the Department of Health Privacy Office of the actions taken to mitigate any harmful effects of unauthorized uses or disclosure of PHI and/or PII.

ATTACHMENT(S):

A. HIPAA Glossary

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

CHILD AND ADOLESCENT MENTAL HEALTH DIVISION

POLICY AND PROCEDURE MANUAL **CAMHD Administration**	**Number: 80.818** Effective Date: April 11, 2003 History: New
SUBJECT: Use and Disclosure of Protected Health Information and Personally Identifiable Information to Avert a Serious Threat to the Health and Safety of an Individual or the Public. REFERENCE: 45 CFR Parts 160 and 164 (HIPAA); 34 CFR §99.31(10), 99.36(a) (FERPA); HRS §334-59.	Page: 1 of 2 APPROVED: ***Signature on File*** Chief

PURPOSE

To establish permitted uses and disclosures of protected health information (PHI) and/or personally identifiable information (PII) to avert a serious and imminent threat to the health or safety of an individual or the public.

DEFINITION

See Attachment A - HIPAA Glossary

POLICY

A. CAMHD may use and disclose PHI and/or PII if in "good faith" it believes the use/disclosure is:

   1. Necessary to prevent or lessen a serious and imminent threat to health or safety of a person or the public, and

   2. Made to a person(s) reasonably able to prevent or lessen the threat, including the target of the threat.

B. Pursuant to FERPA guidelines, CAMHD may disclose PII from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

PROCEDURE

A. CAMHD may disclose PHI and/or PII if in "good faith" it believes the use/disclosure is necessary for law enforcement authorities to identify or apprehend the consumer who may present an imminent threat to the safety of the public.

B. Exception: Disclosure is not permitted if the consumer's statement admitting participation in a violent crime that may have caused serious harm to a victim is learned either:

   1. Through the course of treatment, counseling, or therapy; or

2. Through a request by the consumer to initiate or be referred for the treatment, counseling, or therapy.

C. The release of PHI and/or PII to law enforcement shall be limited to only the statement made and the following information:

1. Name and address;
2. Date and place of birth;
3. Social security number;
4. Date time treatment type and mental status;
5. Date and time of death, if applicable; and
6. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

Accounting for Disclosure

An accounting of any disclosure under this policy will be made in accordance with P&P 80.802, "Disclosure of Clinical Information to the Consumer."

CAMHD's use/disclosure of PHI and/or PII under this policy is in "good faith" so long as the belief is based upon the CAMHD's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

ATTACHMENT(S)

A. HIPAA Glossary

B. Accounting of Disclosures

Review Dates: _____/_____/_____; _____/_____/_____; _____/_____/_____/; _____/_____/_____/

Chief's Initials: [_____] [_____] [_____] [_____]

HIPAA Glossary

Personally identifiable information – means information found in educational records that includes, but is not limited to: 1) the student's name; 2) the name of the student's parent or other family member; 3) the address of the student or student's family; 4) a personal identifier, such as the student's social security number or student number; 5) a list of personal characteristics that would make the student's identity easily traceable; or 6) other information that would make the student's identity easily traceable.

Education records - means those records that are: 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution.

HIPAA Disclosure – means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

FERPA Disclosure – means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including, but not limited to, oral, written, or electronic means.

Amending PHI - Individuals have the right to amend protected health information (PHI) in the designated record set. This does not include research notes outside of the designated record set (information that would not be used for clinical or billing decisions). [See Designated Record Set]

Anonymized - Previously identifiable data that have been de-identified and for which a code or other link no longer exists. An investigator would not be able to link anonymized information back to a specific individual. [See Anonymous, Coded, Linked, Directly Identifiable, Indirectly Identifiable]

Anonymous - Data that were collected without identifiers and that were never linked to an individual. Coded data are not anonymous. [See Anonymized, Coded, Linked, Directly Identifiable, Indirectly Identifiable]

Authorization - Document designating permission. The HIPAA Privacy Rule requires authorization or waiver of authorization for the use or disclosure of identifiable health information for research (among other activities). The authorization must indicate if the health information used or disclosed is existing information and/or new information that will be created during the research. The authorization form may be combined with the informed consent form, so that a subject need sign only one form. An authorization must include the following specific elements: a description of what information will be used and disclosed and for what purposes; a description of any information that will not be disclosed, if applicable; a list of who will disclose the information and to whom it will be disclosed; an expiration date for the disclosure; a statement that the authorization can be revoked; a statement that disclosed information may be re-disclosed and no longer protected; a statement that if the individual does not provide an authorization, s/he cannot receive research-related treatment; the subject's signature and date. [See HIPAA, Consent, Privacy Notice, Use, Disclosure, Waiver of Authorization]

Biometric Identifier - Identifying information based on a physical characteristic (e.g., a fingerprint).

Breach - The breaking or violating of a law, engagement, or duty, either by commission or omission.

Business Associate - An outside person/entity that performs a service on behalf of the health care provider (including a researcher) or the health care institution during which individually identifiable health information is created, used, or disclosed. Certain exceptions apply. Anyone within the Partners affiliated covered entity is not a business associate. Outside researchers and coordinating or statistical centers that participate in conducting the research or third parties that sponsor research are generally not business associates. Third parties that perform a function on the hospitals' or researchers' behalf that is not itself research may be business associates if they receive protected health information. For example, web hosting or data storage companies will be business associates if they receive protected health information. In addition, third parties that handle billing for a research study, or recruitment and screening, will also be business associates.

Coded - Data are separated from personal identifiers through use of a code. As long as a link exists, data are considered indirectly identifiable and not anonymous or anonymized. Coded data are not covered by the HIPAA Privacy Rule, but are protected under the Common Rule. [See Anonymous, Anonymized, Linked, Directly Identifiable, Indirectly Identifiable]

Common Rule - Also known as 45 CFR 46. Outlines requirements of federally supported research with regards to human subjects protections and places the responsibility of these protections on institutions, their Institutional Review Boards (IRBs), and investigators. Among other requirements, the Common Rule mandates that all researchers obtain informed consent from human subjects to participate in research, unless the IRB has approved a waiver of the requirement for informed consent. Partners policy and assurances to the government require all research (not just federally supported studies) to adhere to the Common Rule. [See Consent, Authorization, HIPAA]

Compliance Date - Covered entities must comply with the HIPAA Privacy Rule by April 14, 2003.

Confidentiality - The protection of individually identifiable information as required by state and federal legal requirements and Partners policies. [See Privacy, Privacy Notice]

Consent, Informed - Required by the Common Rule. Refers to the requirement that all researchers explain the purposes, risks, benefits, confidentiality protections, and other relevant aspects of a research study to potential human subjects so that they may make an informed decision regarding their participation in the research. IRBs review the informed consent process and form documenting the consent to ensure compliance with research regulations and policies. The HIPAA Privacy Rule permits entities to include in the informed consent form for research an "authorization" for use or disclosure of individually identifiable health care information. Please see the Partners' Requirements for Informed Consent. [See Common Rule, HIPAA, Authorization]

Covered Entity - Refers to three types of entities that must comply with the HIPAA Privacy Rule: health care providers; health plans; and health care clearinghouses. For purposes of the HIPAA Privacy Rule, health care providers include hospitals, physicians, and other caregivers, as well as researchers who provide health care and receive, access or generate individually identifiable health care information. [See Health Care, Health Care Clearinghouses, Health Care Providers]

Data Aggregation - Combining of sets of protected health information by a business associate to permit data analyses. [See Business Associate]

Data Use Agreement - A satisfactory assurance between the covered entity and a researcher using a limited data set that the data will only be used for specific uses and disclosures. The

data use agreement is required to include the following information: to establish that the data will be used for research, public health or health care operations (further uses or disclosure are not permitted); to establish who is permitted to use or receive the limited data set; and to provide that the limited data set recipient will: (1) not use or further disclose the information other than as permitted by the data use agreement or as required by law; (2) use appropriate safeguards to prevent use or disclosure of the information other than as provided in the agreement; (3) report to the covered entity any identified use or disclosure not provided for in the agreement; (4) ensure that any agents, including a subcontractor, to whom the limited data sets are provided agree to the same restrictions and conditions that apply to the recipient; and (5) not identify the information or contact the individuals. [See Limited Data Set]

Decedents - Deceased individuals. Afforded privacy rights under the HIPAA Privacy Rule, even though not considered "human subjects" protected under the Common Rule. As is the current practice, all research protocols involving the review of medical records of deceased subjects or of living and deceased subjects require review and approval by the HRC/IRB and can be conducted without informed consent and authorization only if the protocol satisfies the criteria for a waiver. If the research includes access to the records of decedents, the investigator will be asked to document that the decedents PHI will only be used for research and that the information is necessary for the research. The covered entity may require the investigator to provide proof of death.

De-identified - Under the HIPAA Privacy Rule, data are de-identified if either (1) an experienced expert determines that the risk that certain information could be used to identify an individual is "very small" and documents and justifies the determination, or (2) the data do not include any of the following eighteen identifiers (of the individual or his/her relatives, household members, or employers) which could be used alone or in combination with other information to identify the subject: names, geographic subdivisions smaller than a state (including zip code), all elements of dates except year (unless the subject is greater than 89 years old), telephone numbers, FAX numbers, email address, Social Security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate/license numbers, vehicle identifiers including license plates, device identifiers and serial numbers, URLs, internet protocol addresses, biometric identifiers, full face photos and comparable images, and any unique identifying number, characteristic or code; note that even if these identifiers are removed, the Privacy Rule states that information will be considered identifiable if the covered entity knows that the identity of the person may still be determined.

Designated Record Set - A health care provider's medical and billing records about individuals and any records used by the provider to make decisions about individuals. Individuals, including research subjects, have the right under the HIPAA Privacy Rule to access and amend protected health information in a Designated Record Set.

Directly Identifiable - Any information that includes personal identifiers. To determine what data may be considered identifiable, please see items that must be removed under the HIPAA Privacy Rule's definition of de-identified. [See Anonymous, Anonymized, Coded, Linked, Indirectly Identifiable]

Disclosure - A release of identifiable health information to anyone or any entity outside of the Partners affiliated covered entity. [Compare Use]

Electronic Medical Record - A computer-based record containing health care information. This record may contain some, but not necessarily all, of the information that is in an individual's

paper-based medical record. One goal of HIPAA is to protect identifiable health information as the system moves from a paper-based to an electronic medical record system.

Genetics - The study of how particular traits are passed from parents to children. Identifiable genetic information receives the same level of protection as other health care information under the HIPAA Privacy Rule. Of note for genetic researchers, the rule defines "identifiable" information to include information from the individual as well as relatives. Thus researchers considering whether to de-identify data should review the definition of de-identified information closely.

Health Care - Care, services, and supplies related to the health of an individual. Health care includes preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, among other services. Health care also includes the sale and dispensing of prescription drugs or devices.

Health Care Clearinghouse - An entity that standardizes health information (e.g., a billing service that processes or facilitates the processing of data from one format into a standardized billing format). Partners and PCHI are considered clearinghouses, because part of their activities meet this definition (note: they are not health care providers).

Health Care Operations - Institutional activities that are necessary to maintain and monitor the operations of the institution. Examples include but are not limited to: conducting quality assessment and improvement activities; developing clinical guidelines; case management; reviewing the competence or qualifications of health care professionals; education and training of students, trainees and practitioners; fraud and abuse programs; business planning and management; and customer service. Under the HIPAA Privacy Rule, these are allowable uses and disclosures of identifiable information "without specific authorization." Research is not considered part of health care operations.

Health Care Provider - Providers of medical or health care. Researchers who provide health care are health care providers. [See Health Care]

Health Information - Information in any form (oral, written or otherwise) that relates to the past, present or future physical or mental health of an individual. That information could be created or received by a health care provider, a health plan, a public health authority, an employer, a life insurer, a school or university or a health care clearinghouse.

Health Oversight Agency - A person or entity at any level of the federal, state, local or tribal government that oversees the health care system or requires health information to determine eligibility or compliance or to enforce civil rights laws.

HIPAA - [pr: hip'-ah] The Health Insurance Portability and Accountability Act of 1996. HIPAA is a federal law that was designed to allow portability of health insurance between jobs. In addition, it required the creation of a federal law to protect personally identifiable health information; if that did not occur by a specific date (which it did not), HIPAA directed the Department of Health and Human Services (DHHS) to issue federal regulations with the same purpose. DHHS has issued HIPAA privacy regulations (the HIPAA Privacy Rule) as well as other regulations under HIPAA.

Human Subject - A living subject participating in research about whom directly or indirectly identifiable health information or data are obtained or created.

Indirectly Identifiable - Data that do not include personal identifiers, but link the identifying information to the data through use of a code. These data are still considered identifiable by the Common Rule. To determine what data may be considered identifiable, please see de-identified. [See Anonymous, Anonymized, Coded, Linked, Indirectly Identifiable]

Individually identifiable health information – individually identifiable health information, including demographic information collected form an individual, and

a) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

b) Relates to the past, present, or future physical or mental heath or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

c) That identifies the individual; or

d) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Individually Identifiable Health Information - A subset of health information that identifies the individual or can reasonably be used to identify the individual.

Institutional Review Board (IRB) - Common Rule-mandated method of peer review to protect human subjects. HIPAA privacy regulations require an IRB also to protect the privacy rights of research subjects in specific ways. At Partners, the IRB will now review all HIPAA-required authorizations and waiver of authorizations for research use of identifiable health information. [See Common Rule, HIPAA, Authorizations, Consent, Waiver of Authorizations]

Limited Data Set - Set of data that may be used for research, public health or health care operations without an authorization or waiver of authorization. The limited data set is defined as PHI that excludes the following direct identifiers of the individual or of relatives, employers or household members of the individual: names; postal address information, (other than town or city, State and zip code); telephone and FAX numbers; electronic mail addresses; SSN; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plates; device identifiers and serial numbers; web universal resource locators (URLs); internet protocol (IP) address; biometric identifiers, including finger and voice prints; full face photos, and comparable images. A covered entity must enter into a data use agreement with the recipient of a limited data set. It should be noted that although a limited data set is subject to only select provisions of the HIPAA Privacy Rule, it may be covered by the Common Rule. Therefore, the Partners policy will be that a request for use or disclosure of a limited data set must be submitted to the IRB. [See Data Use Agreement]

Minimum Necessary - A HIPAA Privacy Rule standard requiring that when protected health information is used or disclosed, only the information that is needed for the immediate use or disclosure should be made available by the health care provider or other covered entity. This standard does not apply to uses and disclosures for treatment purposes (so as not to interfere with treatment) or to uses and disclosures that an individual has authorized, among other limited exceptions. Justification regarding what constitutes the minimum necessary will be required in some situations (e.g., disclosures with a waiver of authorization and non-routine disclosures).

Mitigation - The alleviation, reduction, abatement, or diminution of an injury caused by a neglect, careless or willful act.

Personal Representative - A person authorized under state or other law to act on behalf of the individual in making health-related decisions. Examples include a court-appointed guardian with medical authority, a health care agent under a health care proxy, and a parent acting on behalf of an unemancipated minor (with exceptions where state law gives minors the right to

make health decisions). For a decedent, the personal representative may be an executor, administrator, or other authorized person for matters concerning PHI.

Privacy - For purposes of the HIPAA Privacy Rule, privacy means an individual's interest in limiting who has access to personal health care information.

Privacy Board - A board of members authorized by the HIPAA Privacy Rule to approve a waiver of authorization for use and/or disclosure of identifiable health information. For research purposes, the Institutional Review Board will function as the Privacy Board.

Privacy Notice - Institution-wide notice describing the practices of the covered entity regarding protected health information. Health care providers and other covered entities must give the notice to patients and research subjects and should obtain signed acknowledgements of receipt. Internal and external uses of protected health information are explained. It is the responsibility of the researcher to provide a copy of the Privacy Notice to any subject who has not already received one. If the researcher does provide the notice, the researcher should also obtain the subject's written acknowledgement of receipt.

Protected health information – Individually identifiable health information that is transmitted by electronic media; maintained in any electronic medium; or transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information in: education records covered by the Family Educational Right and Privacy Act (as amended. 20 U.S.C. 1232g) and records described at 20 U.S.C. 1232g(a)(4)(B)(iv). [See Individually Identifiable Health Information]

Psychotherapy Notes - These include notes recorded by the health care provider who is a mental health professional during a counseling session, either in a private session or in a group. These notes are separate from documentation placed in the medical chart and do not include prescriptions. Specific patient authorization is required for use and disclosure of psychotherapy notes.

Public Health Authority - A federal, state, local or tribal person or organization that is required to conduct public health activities.

Research - A systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

Tracking of Disclosures - The HIPAA Privacy Rule gives individuals the right to request an accounting of disclosures of protected health information over the previous six years. If an individual authorizes uses or disclosures for research, the disclosures do not need to be tracked, but disclosures must be tracked if the researcher receives an IRB-approved waiver of authorization. The accounting of disclosures generally must include: the date of the disclosure, the name of the entity or person (and address if known) who received the protected health information, a brief description of the information disclosed, and a brief statement of the purpose of the disclosure. An alternative tracking option is available for research involving 50 or more people.

Transaction - The exchange of information for administrative or financial purposes such as health insurance claims or payment.

Treatment - The provision of health care by one or more health care providers. Treatment includes any consultation, referral or other exchanges of information to manage a patient's care. The Privacy Notice explains that the HIPAA Privacy Rule allows Partners and its affiliates to use and disclose protected health information for treatment purposes without specific authorization.

Use - The sharing of individually identifiable health information within a covered entity. For Partners' purposes, a use is the sharing of such information within the Partners affiliated covered entity [See Affiliated Covered Entity; Compare Disclosure]

Waiver of Authorization - Under limited circumstances, a waiver of the requirement for authorization for use or disclosure of private health information may be obtained from the IRB by the researcher. A waiver of authorization can be approved only if specific criteria have been met. [See Authorization]